



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

बुधवार, 29 जनवरी, 2020/9 माघ, 1941

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla, the 8th May, 2019

No. Shram (A) 6-2/2014 (Awards) Dharamshala.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Dharamshala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sl. No	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	582/16	Duma Ram	E.E. I&P.H, Karsog	01-03-2019
2.	294/16	Lal Dei	E.E. HPPWD, Killar	07-03-2019
3.	426/16	Sumitra	E.E. HPPWD, Killar	09-03-2019
4.	173/17	Raj Mal	D.F.O. Joginder Nagar	12-03-2019
5.	472/16	Charan Dass	E.E. HPPWD, Nurpur	18-03-2019
6.	286/16	Birbal	E.E. HPPWD, Nurpur & others	18-03-2019
7.	255/16	Kuldeep	E.E. HPPWD, Nurpur & others	18-03-2019
8.	299/15	Surender Pandey	M/S Yongman Synthetics	20-03-2019
9.	302/15	Khem Singh	M/S Youngman Synthetics	20-03-2019
10.	353/16	Prem Singh	SEEHPSEBL Karsog	20-03-2019
11.	583/16	Sis Ram	E.E. I&PH, Karsog	02-03-2019
12.	580/16	Dharam Singh	E.E. I&PH, Karsog	02-03-2019
13.	126/17	Vijender Kumar	G.M. M/s Industrial Engineering Cop	19-03-2019
14.	127/17	Jarnail Singh	G.M. M/s Industrial Engineering Cop.	19-03-2019
15.	481/16	Madan Lal	D.F.O. Palampur	23-03-2019
16.	525/16	Som Datt	E.E. HPPWD, Dharampur	23-03-2019
17.	621/16	Rajesh Kumar	E.E. HPPWD, Dharampur	23-03-2019
18.	415/16	Joginder Singh	E.E. HPPWD, Nurpur	25-03-2019
19.	816/16	Finu Ram	E.E. HPPWD, Nurpur	25-03-2019
20.	891/16	Nirmal Singh	E.E. HPPWD, Nurpur	25-03-2019
21.	861/16	Kikar Singh	E.E. HPPWD, Nurpur	27-03-2019
22.	896/16	Behmi Ram	E.E. HPPWD, Nurpur	27-03-2019
23.	862/16	Kushal Ram	E.E. HPPWD, Nurpur & other	27-03-2019
24.	814/16	Ramesh Chand	E.E. HPPWD, Nurpur & other	28-03-2019
25.	895/16	Pawan Kumar	E.E. HPPWD, Nurpur & other	28-03-2019
26.	860/16	Kartar Singh	E.E. HPPWD, Nurpur & other	28-03-2019
27.	268/15	Narpat Ram	D.F.O. Mandi	28-03-2019
28.	272/15	Tara Chand	D.F.O. Mandi	28-03-2019
29.	411/16	Kuldeep Singh	E.E. HPPWD, Nurpur & other	29-03-2019
30.	470/16	Prakash Chand	E.E. HPPWD, Nurpur & other	29-03-2019
31.	624/16	Parmodh Singh	E.E. HPPWD, Nurpur & other	30-03-2019
32.	408/16	Chain Singh	E.E. HPPWD, Nurpur & other	30-03-2019
33.	893/16	Sukar Deen	E.E. HPPWD, Nurpur & other	30-03-2019
34.	469/16	Dev Raj	E.E. HPPWD, Nurpur & other	26-03-2019
35.	815/16	Des Raj	E.E. HPPWD, Nurpur & other	26-03-2019
36.	812/16	Milap Singh	E.E. HPPWD, Nurpur & other	26-03-2019

By order,

NISHA SINGH, IAS
Addl. Chief Secretary (Lab. & Emp.).

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
 CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 582/2016
 Date of Institution : 24-8-2016
 Date of Decision : 01-03-2019

Shri Duma Ram s/o Shri Jagat Ram, r/o Village Bhanyas, P.O. Balindi, Tehsil Karsog, District Mandi, H.P. . *Petitioner.*

Versus

The Executive Engineer, I&PH Division, Karsog, District Mandi, H.P. . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.C. Pandit, Adv.
For the Respondent : Sh. Tarsem Kumar, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Shri Duma Ram s/o Shri Jagat Ram, r/o Village Bhanyas, P.O. Balindi, Tehsil Karsog, District Mandi, H.P. by the Executive Engineer, I&P.H. Division, Karsog, District Mandi, H.P., who had worked as daily wages beldar only for 102 days in year, 1992 and has raised his industrial dispute after more than 20 years *vide* demand notice dated 25-4-2013, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period of 102 days only in year, 1992 and delay of more than 20 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was initially appointed as a daily waged beldar in the year 1992 and had worked as such upto December, 1993. However, thereafter his services were verbally terminated by the respondent without any reason and without serving a prior notice upon to him, as required under the provisions of the Industrial Disputes Act, 1947 and the rules framed there under in the year 1974. It was asserted that after appointment of the claimant/petitioner, he had worked with the respondent at various places, and had continued to work upto December, 1993. It is alleged that while terminating the services of the petitioner, the respondent had engaged many fresh hands. The respondent had violated provisions of Sections 25-G and 25-H of the Industrial Disputes Act, (hereinafter referred to ‘the Act’ for short) as well as Rules 81, 82 and 83 of the Industrial Disputes Rules. The respondent had unlawfully terminated the services of the petitioner. He had been retrenched without giving notice of retrenchment and compensation in lieu thereof. At the time of his termination persons junior to him were retained in service by the respondent. The names of the juniors who were retained in service by the respondent are S/Shri Nimat Ram, Hima Ram, Manohar Lal, Khub Chand, Karmiya and Lachhi Ram. He had completed more than 240 days in 12 calendar months from the date of his illegal termination. The respondent had not followed the provisions of Section 25-F (a) and (b) of the Act. The petitioner had made several requests for his re-employment. He was assured by the respondent that as and when his services would be required, he would be called. However, he was never called again. Rather, juniors to the petitioner were retained and fresh hands were engaged. No notice was given to the petitioner as provided under the rules. While terminating him, the respondent had grossly violated the settled principles of law. Conciliation proceedings had failed due to the unreasonable attitude of the respondent, so the appropriate government had referred the dispute to this Court for adjudication.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“that directions may kindly be issued to the respondents to re-instate the claimant in service along-with all consequential benefits/relief(s) of back wages, seniority, continuity and regularization of services, besides the cost of the petition”.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken.

On merits, it was denied that the petitioner was appointed as a beldar from the year 1988 upto the year 1992. It was asserted that the petitioner was engaged as a beldar on daily waged basis *w.e.f.* 1-9-1992 and who worked intermittently upto December, 1992. He thereafter had left the job of his own sweet will. It was specifically denied that the services of the petitioner had verbally been terminated by the respondent. It was asserted that the petitioner had never completed 240 days in any calendar year and for continuous service, the petitioner had not fulfilled the conditions as provided under Section 25-B of the Act. There was no violation of the provisions of Section 25-F of the Act. Since, the petitioner had left the work of his own sweet will, it was not required to serve a notice upon him as provided under Section 25-F of the Act. Only those workers had been regularized by the respondent, who had fulfilled the criteria of regularization as per government policy. The petitioner is gainfully employed as an agriculturist.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 04-1-2018:

- (1) Whether termination of the services of the petitioner by the respondent *w.e.f.* 01-01-1993 is/was improper and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? ..*OPR.*

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Duma Ram appeared as PW2 and he examined Shri Suresh Kumar as PW1. The respondent examined one Shri Sandeep Chaudhary, who tendered his statement by way of affidavit Ex. RW1/A and copy of mandays chart Ex. RW1/B.

7. Arguments of the learned counsel for the petitioner and Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: No
Relief.	: Petition is partly allowed awarding lump sum compensation of ` 20,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Duma Ram (petitioner) stepped into the witness box as PW2. In his affidavit Ex.PW2/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he was kept at work in the year 1992-93, date he does not remember. He admitted that he had worked with the department from September, 1992 upto December, 1992. He denied that thereafter he had left the work. Volunteered that, he was removed from the work. He admitted that he had never worked with the department in the year 1993. He admitted that he had never worked for more than 240 days. Self stated that, he was never given such opportunity to work. He admitted that he had given the demand notice in the year 2013. He owns five bighas of land, which is cultivated by him. He admitted that from the year 1993 upto April, 2013 he had not made any representation for being kept at work. He denied that the department had not engaged juniors to him. S/Sh. Hima Ram, Manohar Lal, Khub Chand and Karmya, whose names have been mentioned in para 7 of the affidavit, had been kept at work with him. He was categorical that the department had only regularized those persons, who had fulfilled all the conditions for regularization.

11. The petitioner also examined one Shri Suresh Kumar as PW1. He stated in his chief examination that as per the record Sh. Nimmat Ram was regularized on 1-1-2002 and S/Sh. Manohar Lal, Khub Chand, Karam Singh and Lachhi Ram on 1-1-2003 respectively.

In the cross-examination, he admitted that all the above named persons had been kept as per the orders of the Court. He was categorical that as per muster rolls, they all had been kept at work in the year 1992.

12. Conversely, Shri Sandeep Chaudhary, Executive Engineer, I&PH Division, Karsog (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he stated that he was posted as Executive Engineer, I&PH Division, Karsog since October, 2018 and he is well conversant with the case. He denied that the petitioner had worked in their Division from the year 1992 upto the year 1993 regularly. Volunteered that, he had worked intermittently. He denied that thereafter they had not allowed the petitioner to work. He admitted that no notice had been served upon the petitioner

terminating his services. He specifically denied that after terminating the petitioner other workers had been kept at work. Self stated that, they had never terminated the petitioner but had left the job of his own. He feigned ignorance that the persons, namely, S/Sh. Nimat Ram, Manohar Lal, Khub Chand, Karam Singh and Lachmi Ram were appointed by the department and their services have been regularized.

13. Ex. RW1/B is the mandays chart relating to the petitioner.

14. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the year 1992 and that he had worked as such till December, 1993. The respondent took the stand that the petitioner had been engaged as a daily waged beldar on 1-9-1992 and that he worked intermittently upto December, 1992. The petitioner admitted this case of the respondent, as he while under cross-examination was categorical that he had worked with the department from September, 1992 upto December, 1992. Then, the respondent has placed and proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of September, 1992 for the first time as daily waged beldar and he had worked as such upto December, 1992. The claimant/petitioner has not placed and exhibited on record any document to show that he had worked with the respondent upto December, 1993. On the contrary, he while under cross-examination was categorical that he had never worked with the department in the year 1993.

15. As per the mandays chart Ex. RW1/B, the petitioner had worked for 102 days in the year 1992. Thus, in his total service for a period of four months in between September, 1992 to December, 1992, he had only worked for 102 days. Be it recorded here that the petitioner had not worked for more than 240 days preceding 12 calendar months from the date of his termination, which is claimed to have taken place by the petitioner as per petition/statement of claim in December, 1993. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to the alleged illegal termination. It is established on record that the petitioner had not worked for 240 days preceding 12 calendar months from the date of his termination. It is evident from the mandays chart that from September, 1992 till December, 1992 the petitioner had only worked for 102 days, therefore, immediately in the preceding 12 calendar months from the month of termination, petitioner had not worked for 240 days, so as to meet the requirement of law of having a continuous service of one year. Thus, it was not required of the respondent to have issued a notice as provided under Section 25-F of the Act. So, it can safely be held that the respondent had not violated the provisions of Section 25-F of the Act, as claimed by the petitioner.

16. A plea was taken by the respondent that the petitioner was an intermittent worker. He had left the job of his own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand*** reported in **[2019 (160) FLR 16]**, it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Thus, the plea of abandonment put forth by the respondent/employer is not established.

17. It is the case of the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondent and their services stand

regularized. It appears from the substantive evidence of PW1 Shri Suresh Kumar, who is working as a Senior Assistant in the office of the respondent, that persons, namely, S/Sh. Nimat Ram, Manohar Lal, Khub Chand, Karam Singh and Lachhi Ram have been regularized by the department. It was suggested to this witness by the respondent that all these workers were kept at work on muster roll basis in the year 1992. He admitted the suggestion. Putting of this suggestion by the respondent and its admission by the own employee of the respondent, leaves no doubt in mind that the afore-named workers were initially appointed as daily waged beldars in the year, 1992. Admittedly, the petitioner was engaged as a daily waged beldar by the respondent in the month of September, 1992. No grain of evidence has been led on record by the respondent to show that the above named workers were senior to the petitioner. No seniority list has been placed and proved on record by the respondent suggestive of the fact that the persons named by the petitioner were not junior to him, but infact they were his seniors. It has been laid down by the Hon'ble Supreme Court in case titled as *Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union, AIR 2015 SC 1373* that the employer is mandatorily required to circulate the seniority list as prepared. There is not an *iota* of evidence on record tenuously suggesting that the respondent had ever provided any seniority list of daily waged beldars. Since, the respondent has failed to prove on record any seniority list by way of which it could be said that the persons named by the petitioner were not juniors to him, and who admittedly were retained in service by the respondent and subsequently regularized, the claim of the petitioner that he was senior to them has to be accepted as correct on the balance of probability. Therefore, it can be said that the respondent had violated the provisions of Section 25-G of the Act, as at the time of termination of the services of the petitioner, persons junior to him were retained and regularized in service by the respondent.

18. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are not attracted in this case. That apart and more importantly, the petitioner was not entitled to invoke the provisions of Section 25-H of the Act and seek re-employment by citing the case of other employees, who were already in employment and whose services were regularized by the respondent on the basis of their service records in terms of the rules. To my mind, the regularization of the employees already in service does not give any right to the retrenched employee so as to enable him to invoke Section 25-H of the Act for claiming re-employment in the services. The reason is that by such act the employer does not offer any fresh employment to any person to fill any vacancy in their set up, but they simply regularize the services of any employee already in a service. Such an act does not amount to filling any vacancy. The expression 'employment' signifies a fresh employment to fill the vacancies, whereas the expression 'regularization of the service' signifies that the employee, who is already in service, his services are regularized as per service regulations.

19. Such being the situation, I have no hesitation to conclude that the respondent has only contravened the provisions of Section 25-G of the Act.

20. While testifying in the Court as PW2, the petitioner has given his age as 45 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he owns landed property and cultivates the same. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

21. The learned Assistant District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has

prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. vs. Dilu Ram*** (CWP No.95/2000 decided on 26-8-2004) wherein it was *inter alia* held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh vs. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC)....”

22. In ***Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160***, delay of more than 10 years was condoned by our own Hon'ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon'ble Supreme Court in ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82*** that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

23. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Chamba appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh *vide* his report under Section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, *vide* Notification No.11-23/84(Lab)ID/2016/Mandi, dated 15th July, 2016. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful re-trenchment, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned Assistant District Attorney merits rejection and is rejected.

24. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh*** reported in ***2013 (136) FLR 893 (SC)***, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as ***Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651***, by relying upon the cases of ***Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177*** and ***District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)***, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other

consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about four months and had actually worked for 102 days as per mandays chart on record and that the services of the petitioner were disengaged in January, 1993, who had worked as a non- skilled worker and had raised the industrial dispute by issuance of demand notice after about **twenty years** i.e. demand notice was given on 25-4-2013. It is also pertinent to mention here that the petitioner on the date of filing the claim petition, was aged 45 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in Geetam Singh's and Kuberbhai's cases (*supra*), the petitioner is not entitled for reinstatement or for back wages, but only for lump sum compensation.

25. In view of the discussion and findings arrived at by me above, a lump-sum compensation of `20,000/- (Rupees twenty thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue No.4 is answered in the negative and against the respondent.

Issue No. 3:

26. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief:

27. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ₹20,000/- (Rupees twenty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. : 294/2016
Date of Institution : 10-5-2016
Date of Decision : 07-03-2019

Smt. Lal Dei w/o Shri Jalam Singh, r/o V.P.O. Sach, Tehsil Pangi, District Chamba, H.P.

..Petitioner.

Versus

The Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba,
H.P. *..Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. B.C. Katoch, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Smt. Lal Dei, w/o Shri Jalam Singh, r/o V.P.O. Sach, Tehsil Pangi, District Chamba, H.P. during 06/1999 by the Executive Engineer, Killar, H.P.P.W.D. Division Killar, District Chamba, H.P., who has worked as beldar on daily wages basis and has raised her industrial dispute after more than 14 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 144½, 31 and 13 days during years 1997, 1998 and 1999 respectively and delay of more than 14 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that she was appointed as daily waged beldar on muster roll basis in the year, 1994. She continuously worked with intermittent breaks upto October, 2005 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent has violated the principle of ‘last come first go’. For the tribal area, the State of Himachal Pradesh has framed a policy for regularization of daily waged workers who have worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of her termination, the persons junior to her were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Shri Jai Dass, Tek Chand, Sucheta Ram, Mohan Lal, Hari Nath, Janam Singh, Smt. Jamna, S/Shri Raj Kumar, Man Singh, Smt. Sarita Devi, Smt. Chhin Dei, Smt. Bhag Dei, Smt. Sur Dei, Smt. Shyami, S/Shri Chunku Ram, Budhi Ram, Smt. Ram Dei, S/Shri Sham Lal, Dev Raj, Gautam Singh and Bameshwar.

She was not given an opportunity of re-employment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her services, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of Constitution of India.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the oral order of termination/retrenchment of the services of the petitioner by the respondent be set aside, being illegal, arbitrary and highly unjustified and she be granted all consequential benefits as also the other allowances, besides being other benefits and regularization after eight years of service with seniority and back wages, and other relief(s) to which the claimant may be found entitled to.”

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1997 and who had worked intermittently upto 1999 with the department and had left the job of her own sweet will, and had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner mentioned at serial Nos. 1 to 19, 21 & 23 in para No. 4 of the claim petition were appointed as per order of the Labour Court and at serial Nos. 20 & 22 as harness case. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of her own, there was no need of serving a notice upon her or to pay one month wages in lieu thereof. The respondent had not violated the principle of ‘last come first go’. If the petitioner had been terminated in the year 1999, she certainly would have raised an industrial dispute, but the same was raised by her before the Labour Officer only in the year 2012, *i.e.* after about 13 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 30-11-2017:—

- (1) Whether termination of services of petitioner by the respondent during 6/1999 is/was illegal and unjustified as alleged? If so, its effect? ..OPP.

- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
- (4) Whether the claim petition is bad on account of delay and laches as alleged? If so, its effect? ..*OPR*.

Relief

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Smt. Lal Dei appeared as PW1 and tendered in evidence her statement by way of affidavit Ex. PW1/A and copies of mandays chart Ex. PW1/B to Ex. PW1/L. The respondent examined one Shri B.K. Kapil, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B and copy of mandays chart of the co-workers Ex. RW1/C.

7. Arguments of the learned Authorized Representative for the petitioner and Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: No
Relief.	:Petition is partly allowed awarding lump sum compensation of Rs.25,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Smt. Lal Dei (petitioner) stepped into the witness box as PW1. In her affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that she had worked from June, 1997 upto June, 1999 with the respondent/department regularly. Volunteered that, she had worked from the year 1994 upto June, 1999. She categorically denied that after June, 1999, she had left the job and thereafter she had never report for duty. She also denied that she had not worked for 160 days in all the years to fulfill the criteria of tribal area. She further denied that she of her own left the job in the year, 1999 and thereafter had never returned to work. She denied that in the tribal area of Pangri the work is done only from the month of April upto the month of October, as thereafter the area remains snowbound. She also denied that she had never marked her presence with the department during the working months. She works as an agriculturist and these days is earning

her livelihood from agricultural chores. She specifically denied that the co-workers have been re-engaged as per the orders of the Court.

11. Ex. PW1/B is the year-wise mandays chart relating to Smt. Chhin Dei and three others.
12. Ex. PW1/C is the copy of seniority/regularization of daily waged workers relating to S/Shri Dev Raj and Goutam Singh.
13. Ex. PW1/D is the copy of regularization of daily waged workers relating to Shri Tek Chand and four others.
14. Ex. PW1/E is the copy of year-wise mandays detail relating to Shri Shiv Kumar and thirteen others.
15. Exts. PW1/F to I are the copies of seniority list in respect of Shri Sucheta Ram and others.
16. Exts. PW1/J to L are the year-wise mandays chart relating to Shri Chunku Ram and others working under the respondents.
17. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the muster roll pertaining to the petitioner has not been annexed with the reply. Volunteered that, it can be produced on the directions of the Court. He also admitted that as per the record when the petitioner had left the work, no notice of any sort was issued to her. He also clearly admitted that no departmental proceedings were initiated against the petitioner. He further admitted that as per the record, the petitioner had never been again called for work. Volunteered that, she had left the job of her own. He also admitted that Ex. PW1/B to Ex. PW1/L were issued by their office. He was categorical that junior persons, who had continuously worked, have been regularized. Volunteered that, only those persons have been regularized who were engaged as per the Court orders.

18. Ex. RW1/B is the mandays chart relating to the petitioner.
19. Ex. RW1/C is the mandays chart relating to the co-workers.
20. The version of the petitioner is that her services were engaged as a daily waged beldar by the respondent in the year 1994 and she had worked as such till October, 2005. The respondent has pleaded that the petitioner was appointed as a daily waged beldar in the year, 1997 and she had worked upto 1999 intermittently and had left the job of her own. Although, the petitioner (PW1) in her cross-examination denied the fact that she had been engaged in the year, 1997 and had worked upto June, 1999 with the respondent/department but, however, the respondent has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B. Its perusal reveals that the services of the petitioner were engaged in the month of June, 1997 for the first time as daily waged beldar and she had worked upto June, 1999. The claimant/petitioner has not placed or exhibited on record any document to show that she was appointed by the respondent in the year 1994 and that she had worked as such upto October, 2005, as claimed.

21. Then, as per the mandays chart Ex. RW1/B, the petitioner had worked for 144½ days in the year 1997, 31 days in the year 1998 and 13 days in the year 1999. This document further

shows that from the years 1998 to 2004, the petitioner had not worked for a single day. Thus, in her total service of three years from June, 1997 upto June, 1999, she had only worked for 188½ days. Be it recorded here that the petitioner had not worked for more than 160 days preceding 12 calendar months from the date of her termination, which is claimed to have taken place by the petitioner as per petition/statement of claim in October, 2005. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination. It is established on record that the petitioner had not worked for 160 days preceding 12 calendar months from the date of her termination. It is evident from the mandays chart that in the year 1999 the petitioner had only worked for 13 days, therefore, immediately in the preceding 12 calendar months from the month of termination, petitioner had not worked for 160 days, so as to meet the requirement of law of having continuous service of one year. Thus, it was not required of the respondent to have issued any notice as provided under Section 25-F of the Act. So, it can safely be held that the respondent had not violated the provisions of Section 25-F of the Act, as claimed by the petitioner.

22. A plea was taken by the respondent that the petitioner was an intermittent worker. She left the job of her own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand*** reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon her to resume the duties after she allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Shri B.K. Kapil (RW1) clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. Thus, the plea of abandonment put forth by the respondent/employer is not established.

23. Ex. RW1/C, the mandays chart/seniority list of beldar category relating to Shri Hukkam Chand and twenty six others, reveals that Shri Dev Raj was appointed in the year 1989, whereas the services of Shri Karam Dev and Shri Raj Kumar were engaged in the year 1996, those of S/Shri Hukkam Chand, Suraj Ram, Ludder Singh, Mohinder Singh, Hari Nath, Janam Singh, Smt./Sh. Jamna, Man Singh, Smt. Sarita Devi and Sh. Hari Ram were engaged in the year 1997, those of Shri Jai Dass and Sh. Mohan Lal in the year 1998, those of Shri Tek Chand and Smt. Chhin Dei were engaged in the year 1999, while those of Smt. Bhag Dei, Smt. Sur Dei, Smt. Shyami and Shri Chunku in the year 2000, those of Shri Sucheta Ram in the year 2001, while those of Smt. Ram Dei in the year 2003, those of Shri Shyam Lal in the year 2006 and that of Shri Gautam Singh in the year 2007. Of course, a note has been given on Ex. RW1/C that all these workers, except for Shri Sham Lal and Shri Gautam Singh mentioned at serial Nos. 26 & 27, were engaged as per the orders of this Court/Tribunal. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. RW1/B is June, 1997. There is nothing on record to show that the persons figuring at serial Nos. 1 to 22 and 24 were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to her.

24. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act.

25. Faced with the situation, it was contended for the respondent that the junior workers had been engaged and retained in service as per the orders of Labour Court-cum-Industrial Tribunal. No doubt, a note has been given on Ex. RW1/C that all the co-workers had been re-engaged as per the orders of Labour Court-cum-Industrial Tribunal, but merely because on the basis of orders of the Court the persons shown therein had been reengaged, does not defeat the claim of petitioner that they were juniors to her. Even if the petitioner has failed to prove on record that she had worked for more than 160 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, she was entitled for regularization of her service, but the respondent cannot be absolved from its accountability with regard to the provisions of Sections 25-G and 25-H of the Act, which as discussed above have been violated.

26. While testifying in the Court as PW1, the petitioner has given her age as 46 years. It is well known that a person like the petitioner will not sit at home during the period she is/was out of the service. Otherwise too, during her cross-examination, the petitioner admitted that she is an agriculturist and earns her livelihood by doing agricultural chores. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed, so she is not entitled to the back wages.

27. The learned Assistant District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the relief(s) she has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. vs. Dilu Ram*** (CWP No. 95/2000 decided on 26-8-2004) wherein it was *inter alia* held:—

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh v. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC)...”

28. In ***Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160***, delay of more than 10 years was condoned by our own Hon'ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon'ble Supreme Court in ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82*** that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

29. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Chamba appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh *vide* his report under Section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, *vide* Notification No.11-5/99(Lab.)ID/2016/Chamba, dated 12th May, 2016. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim, therefore, does not suffer from the vice of

delay and laches. So, the aforesaid contention of the learned Assistant District Attorney merits rejection and is rejected.

30. In case titled as *Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh* reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as *Deputy Executive Engineer vs. Kuberbhai Kanjibhai* **2019 (160) FLR 651**, by relying upon the cases of *Bharat Sanchar Nigam Limited vs. Bhurumal* (2014) 7 SCC 177 and *District Development Officer & another vs. Satish Kantilal Amerelia* **2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about three years and had actually worked for 188½ days as per mandays chart on record and that the services of the petitioner were disengaged in June, 1999, who had worked as a non-skilled worker and had raised the industrial dispute by issuance of demand notice after about *fourteen years* i.e. demand notice was given in the year 2012. It is also pertinent to mention here that the petitioner on the date of filing the claim petition, was aged 46 years and had a sufficient spell of life to work and earn her livelihood. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in Geetam Singh's and Kuberbhai's cases (*supra*), the petitioner is not entitled for reinstatement or for back wages, but only for lump sum compensation.

31. In view of the discussion and findings arrived at by me above, a lump-sum compensation of Rs. 25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue No. 4 is answered in the negative and against the respondent.

Issue No. 3:

32. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief:

33. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of Rs. 25,000/- (Rupees

twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 7th day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	: 426/2016
Date of Institution	: 19-8-2016
Date of Decision	: 09-03-2019

Smt. Sumitra w/o Shri Baldev Ram, r/o Village Mouch, P.O. Kironi Kothi, Tehsil Pangi, District Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D./ I.&P.H. Division Killar (Pangi) District Chamba, H.P. *..Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. Rajat Chaudhary, Adv.
For the Respondent	: Ms. Ritika, A.D.A.

AWARD/ORDER

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Smt. Sumitra w/o Shri Baldev Ram r/o Village Mouch, P.O. Kironi Kothi, Tehsil Pangi, District Chamba, H.P. during year 2005 by the Executive Engineer, H.P.P.W.D./I.&P.H. Killar Division, (Pangi) District Chamba H.P., without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified; whereas she has raised the industrial dispute *vide* demand notice dated 02-06-2012 after lapse of more than 7 years. If not, keeping in view delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The file taken up today for conciliation before the Bench of National Lok Adalat. Conciliation tried and is successful. However, Shri Rajat Chaudhary, learned advocate for the petitioner has made the below given statement before the Bench of National Lok Adalat today:—

“Stated that I do not want to proceed with the present reference (*i.e.* Ref. No. 426/16) and withdraw the same on behalf of the petitioner”.

3. In view of the above statement, this reference/claim petition is dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Order/Award be sent to the appropriate government for further necessary action at its end.

6. File after due completion be consigned to the records.

Announced in the National Lok Adalat today this 9th day of March, 2019.

Sd/-
(B.S. PATHANIA),
Member.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
National Lok Adalat,
Dharamshala Distt. Kangra, H.P.

Ref No.	: 173/2017
Date of Institution	: 08-8-2017
Date of Decision	: 12-03-2019

Shri Raj Mal s/o Shri Kakhu Ram, r/o Village Kahog, P.O. Barot, Tehsil Padhar, District Mandi, H.P. ..Petitioner.

Versus

The Divisional Forest Officer, Forest Division, Joginder Nagar, District Mandi, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. N.L. Kaundal, AR
For the Respondent	: Sh. Tarsem Kumar, A.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether the termination of services of Shri Raj Mal s/o Shri Kakhu Ram, r/o Village Kahog, P.O. Barot, Tehsil Padhar, District Mandi, H.P. from time to time during October,

1987 to May, 2015 and finally terminated during June, 2015 by the Divisional Forest Officer, Forest Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, past service benefits, seniority, regularization and compensation the above worker is entitled to from the above employer/management?"

2. The case of the petitioner, as set out in the statement of claim is that his services were engaged by the respondent on muster roll basis in the year 1984. He had worked under the supervision of Forest Range Officer, Urla upto the year 2015. The latter used to disengage his services without any written order, so that he could not complete more than 240 days during the aforesaid period for the purposes of the provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for short). The services of the petitioner had been finally terminated by the respondent in the year 2015. Fictional breaks were given by the respondent upto the year 2015. It is also asserted that while terminating the services of the petitioner in the year 2015, the respondent had not followed the principle of 'last come first go' whereas the persons junior to him, namely, S/Sh. Chaman Lal, Sahnu Ram, Love Kumar, Nirmla Devi, Shyam Singh, and Smt. Sheela Devi were retained in service without any breaks and all these workers are still working with the respondent/department. No muster roll, casual card and wage slips had ever been provided to the petitioner by the respondent. He had raised a demand notice on 31-8-2015 against the respondent. Its copy stood forwarded to the Labour-Inspector-cum-Conciliation Officer, Joginder Nagar. Dates were fixed for conciliation from time to time, but the representative of the respondent had claimed that the services of the petitioner could not be engaged continuously. The period of artificial breaks is required to be counted as continuous service for the purpose of regularization of petitioner's service. The act and conduct of the respondent is highly unjustified, arbitrary, un-constitutional and against the mandatory provisions of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

- “(i) that the Hon'ble Court may kindly set aside the illegal verbal termination order from time to time *w.e.f.* 1984 to 2015 and finally termination *w.e.f.* 2015 and direct the respondent to reinstate the services of petitioner with full back wages, in continuity of service, seniority with all other consequential service benefits and the break period of the petitioner be set aside and direct the respondent to grant the seniority in continuity of service to the petitioner for the period from 1984 to 2015 with all consequential benefit including regularization from the date of junior.
- (ii) The Hon'ble Court may further direct the respondent to regularize the services of petitioner on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
- (iii) The Hon'ble Court may kindly direct the respondent to pay Rs.15,000/- to the petitioner as litigation cost as well as counsel fee.
- (iv) Any other relief the Hon'ble Court deems fit may kindly be granted in the favour of petitioner in the interest of justice”.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objection has been taken to the effect that no legal and fundamental right of the petitioner has been infringed by the respondent, so the petition was not maintainable.

On merits, it has been owned that the services of the petitioner were engaged in the month of October, 1987. However, it was claimed that the petitioner was appointed as a casual labourer to carry out various seasonal forestry works in the department. The works carried out by the forest department include plantation, fire protection and soil moisture conservation works, which all are seasonal and site specific. Depending upon the need, the department employs labour on the basis of seasonal requirement for its labour works. The demand of such labour is always fluctuating, depending upon the workload etc. It also depends upon the financial allocation to the works, to be carried out in a year. For each and every work, norms are specified. The daily waged workers are not engaged against any regular vacancy and there is no post of casual labourer in the forest department. Since, the department is not a Work Charged Establishment and the daily wagers are not engaged against regular establishment, so there is not regular budget provision for their wages in the annual budget of the department. The wages are paid out of the funds earmarked for the work, for which they are engaged. Since, there is not much work with the department, the labourers are engaged on daily or on monthly basis only. The petitioner worked intermittently, as per the availability of work and funds on the seasonal forestry works on muster rolls *w.e.f.* 10/1997 to 10/2006. He had abandoned the work *w.e.f.* 11/2006 to 3/2009 and had again reported at work in the month of April, 2009. Since, then he had hired the work from the respondent on bill basis and had got the payments for the execution of various works. He is still working with the respondent intermittently, as per availability of work and funds and had never completed 240 days in any of the calendar years since his engagement, except the years 1999 and 2005. No fictional breaks were ever given to the petitioner. The principle of 'last come first go' has been followed strictly and no fresh hands have been engaged. No workmen junior to the petitioner had been retained in service, as per the record. Shri Love Kumar was engaged in Joginder Nagar Range on 1-12-1998 and was regularized as a forest worker as per the orders of the Court. Smt. Nirmla Devi was engaged on compassionate grounds in Dharampur Range, while Shri Shyam Singh was engaged as a contingent paid worker on compassionate grounds under died in harness policy after the death of his father. Smt. Sheela Devi was engaged on part-time *w.e.f.* July, 1998 and thereafter her services had been converted into whole time since 26-11-2009. She is still working as a daily wager with the respondent. S/Shri Chaman Lal and Sahnuram, had never worked in this Division. The petition is meritless.

In these circumstances, the respondent prayed that the petition in hand be dismissed.

4. In the rejoinder, the petitioner reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 02-7-2018:—

- (1) Whether time to time termination of the services of petitioner during October, 1987 to March, 2015 by the respondent is legal and justified as alleged? ..*OPP.*
- (2) Whether final termination of services of the petitioner by the respondent during June, 2015 is legal and justified as alleged? ..*OPP.*
- (3) If issue No. 1 & issue No. 2 are proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (4) Whether the present claim petition/reference is not maintainable in the present form as alleged? ..*OPR.*

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Raj Mal appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of seniority list dated 30-11-2016 Ex. PW1/B and copy of seniority list of daily wagers Ex. PW1/C. The respondent examined one Shri Rajeev Kumar, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of the petitioner Ex. RW1/B, copy of Award dated 13-1-2005 Ex. RW1/C, copy of letter dated 14-5-1995 Ex. RW1/D, copy of order dated 9-7-2003 Ex. RW1/E and copy of letter dated 27-9-2008 Ex. RW1/F.

7. Arguments of the learned Authorized Representative for the petitioner and Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: Redundant
Issue No. 3	: Discussed
Issue No. 4	: No
Relief.	: Petition is partly allowed per operative part of the award.

REASONS FOR FINDINGS

Issues No. 1 to 4:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Raj Mal (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he had worked with the department after the year 2015. Volunteered that, he was again called in April, 2016 and had again been given break in August, 2017. He denied that he had not been given break in the year 2017 and that he had left the work of his own. He denied that there is only seasonal work in the forest department. Self stated that work is done throughout the year. He admitted that he was engaged by the department in October, 1987. Volunteered that, he was kept at work in the year 1984. He denied that he had never been kept at work in the year 1984. He denied that he had never worked regularly as a daily wager with the department. He feigned ignorance that as per the availability of work and budget, it is got done by the department. He denied that he had been working intermittently. He admitted that the details of the work done by him with the department is correct in the mandays. He denied that he was never given fictional breaks by the department. However, he admitted that he had never worked with the department for 240 days in any year. He owns land and does agricultural works. He denied that after April, 2009, he had worked with the department on bill basis. He denied that the department had not engaged any junior. He admitted that Shri Love Kumar was appointed as per orders of the Court. He also admitted that Smt. Nirmla Devi and Shri Shaym Singh were appointed on compassionate grounds. He feigned ignorance that Smt. Sheela Devi was kept at work as part-time in July, 1998. He was not aware that Shri Chaman Lal and Sahnu Ram had never worked with the department.

11. Ex. PW1/B is the Division Level revised seniority list of casual labour daily wagers of Joginder Nagar Forest Division, as it stood on 30-11-2016.

12. Ex. PW1/C is the copy of seniority list of Daily Wagers of Joginder Nagar Forest Division.

13. Conversely, Shri Rajeev Kumar, Divisional Forest Officer, Joginder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that at the time of engagement of the petitioner, no appointment letter was issued. He also admitted that during the period of the services of the petitioner, no attendance or casual card were issued. Volunteered that, he was kept at work of seasonal nature. He further admitted that no notification has been issued regarding the status of seasonal industry of the Forest Department. He denied that the respondent had intentionally given fictional breaks to the petitioner. He admitted that no notice had been issued to the petitioner for temporary work by the department. At present in Joginder Nagar Division, there are 27 regular forest workers for field works, like plantation, nursery, fire watcher etc. He admitted that the petitioner had also been kept for the aforesaid works. He admitted that as per Ex. RW1/E Smt. Nirmla Devi, Forest Worker was appointed as a daily wager. He feigned ignorance that she was kept at work in the year 1998. He also admitted that as per Ex. RW1/F Shri Shyam Singh was also engaged as a daily wager. He specifically admitted that as per Court order Shri Love Kumar was given seniority and continuity in service, without back wages and his services were regularized in September, 2007. He admitted that Shri Shaym Singh was junior to the petitioner, self stated that he was appointed as daily wager on compassionate grounds and is still working with the department. He denied that the petitioner had been given breaks from time to time upto the year 2015. He admitted that no notice had been given to the petitioner to report for work, nor any departmental inquiry had been initiated against him. He admitted that the petitioner is working since the year 1987. Volunteered that, he has worked as a casual labourer for seasonal works. He was categorical that there is no agreement with the petitioner that he was kept at work on bill voucher. Volunteered that, as per the notification of the government, he had been kept at work on bill voucher. He clearly admitted that Smt. Nirmla Devi figuring at serial No.1 in Ex. PW1/C is working regularly since the year 2000 and she has also been regularized.

14. Ex. RW1/B is the copy of the mandays chart relating to the petitioner.

15. Ex. RW1/C is the copy of Award dated 13-1-2005 passed in Reference No. 278/2001 (RBT No. 311/04) by this Tribunal.

16. Ex. RW1/D is the copy of letter dated 14-5-1995 regarding application of Smt. Nirmla Devi wd./o late Sh. Roop Lal, Daily Wager from Principal CCF, H.P.

17. Ex. RW1/E is the copy of order dated 9-7-2003 passed in O.A. (M) No. 20/2000 by the Hon'ble Administrative Tribunal, Shimla.

18. Ex. RW1/F is the copy of letter dated 27-9-2008 regarding appointment of sons, daughters/real relatives of government servants who died in harness-providing employment thereof.

19. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. The mandays chart Ex. RW1/B unfolds that the petitioner was initially

employed in the month of October, 1987 by the respondent. Although, the petitioner has claimed that his services were engaged as a daily wager by the respondent in the year 1984, but he has not placed on record any document in this regard. Then, the cross-examination of the petitioner reveals that he admitted his mandays chart to be correct.

20. The mandays chart Ex. RW1/B clarifies that the month of initial engagement of the petitioner is October, 1987. Placed on record by the petitioner is a copy of revised seniority of casual labourer daily wagers of Joginder Nagar Forest Division, as it stood on 30-11-2016 as Ex. PW1/B. It reflects the name of the petitioner at serial No. 3 and that his services were engaged as a daily wager on 1st October, 1987. The defence of the respondent is that the petitioner was engaged for seasonal work, as and when available with the respondent and subject to the availability of budget. However, the respondent has not placed on the file any document evidencing that the petitioner was employed for seasonal forestry works subject to the availability of funds and the work. Moreover, the mandays chart Ex. RW1/B reveals that in some years, the petitioner worked for more than 200 days with the respondent/department. In the year 1999, he served the respondent for 282 days. A person working for 282 days in a year cannot be termed as a seasonal worker. Even otherwise, it is nowhere the plea taken by the respondent nor there is any iota of evidence on record to show that the forest department had been declared as a seasonal industry, as required under the law. Shri Rajeev Kumar (RW1) while under cross-examination was categorical that no notification has been issued by the government specifying the forest department as a seasonal industry.

21. The version of the petitioner is that he had worked with the respondent/department uptil May, 2015. In the month of June, 2015 his services were terminated by the respondent wrongly and illegally. It is not the case of the petitioner that the mandays chart Ex. RW1/B produced by the respondent is incorrect. Rather, he while under cross-examination was categorical that the mandays chart issued by the department depicted the correct position of his work. The mandays chart reveals that in the month of April, 2016, the petitioner worked for 23 days with the respondent. After that, he had worked for 19 days each under the respondent from September, 2016 to December, 2016. He thereafter had also worked for the months of April, 2017 to August, 2017 with the respondent. Since, the petitioner served the respondent after May, 2015, as he had worked from April, 2016 uptil August, 2017 for a number of days, I am at a loss to understand as to how it lies in his mouth to say that his services were disengaged by the respondent in June, 2015 in a wrongful manner. From the statement made by the petitioner (PW1), it can be gathered that even after the year 2015 he had worked with the respondent. The said fact finds support from the mandays chart, Ex. RW1/B. In view of these facts, it can easily be said that the petitioner is not speaking the truth. His services were never finally terminated by the respondent in the month of June, 2015, as alleged. As no retrenchment order was passed by the respondent in the month of June, 2015, it cannot be said that the termination/retrenchment order is illegal and unjustified.

22. So far as providing the fictional breaks to the petitioner by the respondent from time to time during the year 1987 to May, 2015 is concerned, I would like to say that the said assertion of the petitioner appears to be true. Be it recorded at the risk of repetition that the respondent has not placed and exhibited on record any document to prove that the services of the petitioner used to be engaged for seasonal forestry works depending upon the availability of the budget. A plea was taken by the respondent that the petitioner had himself abandoned the work of his own free will and volition. If the petitioner used to remain absent from his duties, then why the respondent did not issue any show cause notice to him or initiate disciplinary proceedings against him? The reasons to that effect being obscure go to show that the story put forth by the respondent that the petitioner used to work as per his sweet will and convenience is incorrect. A plea was also taken to the effect that since April, 2009 the petitioner had been hiring the work

from the respondent on bill basis. No doubt, as per the mandays chart Ex. RW1/B since April, 2009 till August, 2017 the petitioner is shown to have done the work on bill basis but, however, as per this document earlier the petitioner was engaged as a daily waged worker on muster roll basis. It is nowhere the case of the respondent, nor any evidence has been led to the effect that the change in the conditions of the service applicable to the petitioner, a notice in the prescribed manner of the nature of the change proposed to be effected had been served. Section 9-A of the Act clearly provides that no employer, who proposes to effect any change in the conditions of the service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change, without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected. That being the position, the aforesaid plea raised by the respondent merits dismissal and is accordingly negated. Artificial/fictional breaks were provided to the petitioner/workman by the respondent, which amounts to unfair labour practice as per the Fifth Schedule appended to the Act. Such being the situation, it is held that the claim petition with regard to the alleged final termination of services of the petitioner by the respondent in the month of June, 2015 is not maintainable. The claim petition with regard to artificial/fictional breaks is maintainable.

23. These issues are decided accordingly.

Relief:

24. As a sequel to my findings on issues above, the instant claim petition succeeds in part and the same is partly allowed. The claim of the petitioner with regard to the final termination of his services in the month of June, 2015 being meritless and not maintainable is dismissed. However, it is held that the artificial/fictional breaks were provided to the petitioner by the respondent from October, 1987 till May, 2015 wrongly and illegally. The period of fictional breaks is ordered to be counted for the purpose of continuous service, except back wages. Since, it was suggested to the respondent (RW1) by the petitioner that he is in service since the year 1987 and which fact was admitted by him, it can be gathered that the petitioner is still serving the respondent/department. So, the respondent is directed not to provide fictional breaks to the petitioner in future also. The claim petition to that extent succeeds and is allowed. Parties to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 12th day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No.	: 472/2016
Date of Institution	: 22-8-2016
Date of Decision	: 18-03-2019

Shri Charan Dass s/o Shri Shango Ram, r/o Village Dev Bharari, P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. ..Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Nurpur Division, District Kangra, H.P. ..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.D.Sharma, Adv.
For the Respondent : Sh. Tarsem Kumar, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Charan Dass s/o Shri Shango Ram, r/o Village Dev Bharari, P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. during 1985 by the Executive Engineer, H.P.P.W.D. Nurpur Division District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified; whereas he has raised the dispute *vide* demand notice dated 27-01-2012 after lapse of 27 years. If not, keeping in view delay of more than 27 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits, past service benefits and compensation the above ex-worker is entitled to from the above employer/managements?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as beldar on daily wages in the month of April, 1985 in HPPWD Division Nurpur for the construction of Bodh-Chakki Dhar-Aund Haddal and Suliali to Dev Barari roads and at other sites adjoining to it. But, his services were disengaged orally in April, 1989. The petitioner had worked in the construction of roads to the villages and on national highway. He had worked with full zeal and devotion and there was no complaint against his work and conduct. He had completed 240 days in each calendar year. His disengagement was unfair, unjust, illegal, arbitrary, malafide and unconstitutional. After his termination, the petitioner had made several verbal requests to the respondent and every time he was given assurance that he would be re-engaged shortly. However, when he was not re-engaged for long, he had made written request to the department, but without success. A resolution on behalf of retrenched workmen had also been sent to Assistant Registrar, Hon'ble H.P. State Administrative Tribunal, Shimla, which is pending. Due to poverty and illiteracy, the petitioner could not pursue his case before the appropriate forum. Besides this, he had been requesting the official of the department to re-engage him, which was being put off one pretext or the other. A junior, named Smt. Kusam Lata is working with the respondent. The oral termination of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for short). Apart from this, the employer was also bound to follow the provisions of Sections 25-G and 25-H of the Act. Retaining of juniors and engaging fresh hands after the disengagement of the petitioner is violative of the provisions of Sections 25-G and 25-H of the Act.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the illegal verbal termination order of the petitioner *w.e.f.* December, 1999 be set aside and the respondent be directed to reinstate the services of the petitioner with full back wages, continuity in service, seniority with all other consequential service benefits. The Hon’ble Court further directed the respondent to regularize the services of the petitioner as per policy framed by the State Government besides that the respondent be directed to pay Rs.15,000/- to the petitioner as litigation costs.

3. On notice, the respondents appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on the grounds of delay and laches have been taken.

On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from April, 1985 upto April, 1989. It was asserted that the petitioner had never been engaged by the respondent so the question of completing 240 days did not arise. It is admitted that HPPWD Division Nurpur was involved in construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondent, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondent. However, it is admitted that 24 number of workers had been engaged by the respondent as per the directions of the Hon’ble High Court and subsequent order issued by the Engineer-in-Chief HPPWD Shimla *vide* letter No. 23338—68 dated 29-11-2010.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder was intended to be filed, as per the separate statement of the learned Counsel for the petitioner recorded on 10-5-2018 and placed on the file.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 10-5-2018:—

- (1) Whether termination of services of the petitioner by the respondent during year, 1985 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged? ..*OPR.*

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Charan Dass appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A. The respondent examined one Shri Dinesh Kumar Dhiman, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of Notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23-7-1994 as Ex. RW1/C, copy of office order dated 29-11-2010 as Ex. RW1/D, copy of letter dated 19-8-

1998 as Ex. RW1/E, copy of application dated 18-12-1999 filed by Kusum Lata as Ex. RW1/F, copy of letter dated 18-1-2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of working days chart of Smt. Kusum Lata as Ex. RW1/I & Ex. RW1/J.

7. Arguments of the Learned Counsel for the petitioner and Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Yes
Issue No. 4	: Not pressed/redundant
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Charan Dass (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification No. PBW-(A)-A(1)17/94. He denied that he had never worked with the respondent. Volunteered that, he had worked from April, 1985 upto April, 1989 regularly. He denied that he never worked with the respondent from April, 1985 upto April, 1989. He denied that no breaks had been given to him by the department. He also denied that he was never disengaged by the respondent/department. He further denied that the respondent had not kept at work any junior. He feigned ignorance that Smt. Kusum Lata was appointed as daily waged beldar in HPPWD Division Dalhousie in the year 1983. He admitted that he works as an agriculturist and these days is earning his livelihood by doing agricultural chores. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

12. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

13. In the cross-examination, he admitted that from 1986 upto the year 1990, the work of Bodh to Chakki Dhar road continued. He denied that the petitioner alongwith others had been engaged on daily wage basis for the said work. He also denied that from April, 1985 upto April, 1989 the petitioner had regularly worked and had completed 240 days every year. Volunteered that, as per their record, the petitioner had never worked with the respondent. He denied that the respondent had regularized junior workers, self stated that the respondent has not

kept at work any junior. He denied that the services of the petitioner had been illegally terminated by the respondent.

14. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to shift of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

15. Ex. RW1/C is the copy of Office Order dated 23-7-1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

16. Ex. RW1/D is the copy of another Office Order dated 29-11-2010 with regard to implementation of the award of this Court dated 22-12-2007.

17. Ex. RW1/E is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

18. Ex. RW1/F is the copy of letter dated 18-12-1999 regarding representation of Smt. Kusum Lata.

19. Ex. RW1/G is the copy of letter dated 18-1-2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, H.P. HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

20. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

21. Ex. RW1/I is the copy of working days chart of Smt. Kusum Lata working under Banikhet Sub-Division HPPWD Banikhet.

22. Ex. RW1/J is the copy of working days chart of Smt. Kusum Lata working under Suliali Sub Division HPPWD Suliali.

23. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the month of April, 1985 and that he had worked as such upto April, 1989. It was the stand taken by the respondent that the petitioner had never been engaged by the department. Although, the petitioner (PW1) in his cross-examination denied the fact that he had never been engaged as a daily waged beldar in the month of April, 1985 by the respondent and that he had not worked as such upto April, 1989 but, however, the respondent has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. Its perusal reveals that the petitioner had never worked with the respondent even for a single day from the year 1984 upto the year 1986. In view of this fact, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that there existed a relationship of employer and employee/workman in between the parties. Significantly, the petitioner neither in his pleadings, nor in his ocular evidence has stated the date on which he was engaged by the respondent. There is also no pleading or evidence to the effect as to on which specific date his services stood terminated by the respondent. Only the months and years of joining and termination of the petitioner stand specified in the statement of claim and his statement by way of affidavit Ex. PW1/A. No other witness was examined by the petitioner from HPPWD, Division, Nurpur, who had seen him working as a daily waged beldar with the respondent. Then, it is nowhere the case of the petitioner that he had ever marked his attendance in all those five years, the period for which he claims to have worked with the respondent. Had there been any attendance register in which the petitioner had appended his signatures, he ought to have placed and exhibited on record the same so as to show that his services had been engaged by the respondent from the year 1985 upto the year 1989. But, so is not the case here. No such attendance register has seen the light of the day, nor any prayer had been made by the petitioner for the production of the same

from the respondent during the pendency of this case. Further, the petitioner himself claims that he had been engaged as a daily waged beldar on muster roll basis. He could have easily proved the muster rolls for the period for which he had worked. But, no such musterroll has been produced. Even no appointment letter to show that the services of the petitioner had been engaged by the respondent, has been placed on record by him.

24. From the ocular and documentary evidence of the respondent available on record, it can be gathered that the petitioner had never been appointed in any capacity at any point of time by the respondent.

25. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondent, therefore, the provisions of Section 25-F of the Act are not attracted in this case. The respondent can also not be held to have violated the provisions of Sections 25-G and 25-H of the Act, as the relationship of the petitioner and the respondent being that of a workman and employer stands not established on record.

26. In view of the discussion and findings aforesaid, it appears to me that the avarice of the petitioner to grab government job and money had forced him to file a totally false and baseless claim. He is not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3:

27. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondent and against the petitioner.

Issue No. 4:

28. Not pressed. Even otherwise, the plea of delay and laches would have been relevant, had the petitioner been able to prove the demand notice as well as the fact of he being a workman under the respondent for the alleged period. Hence, this issue becomes redundant.

Relief:

29. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition being meritless, not maintainable and malafide, fails. It is, therefore, dismissed with costs quantified at ₹5,000/-. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 18th day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No.	: 286/2016
Date of Institution	: 04-5-2016
Date of Decision	: 18-03-2019

Shri Birbal s/o Shri Tota Ram, r/o Village Dev Bharari, P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. ..Petitioner.

Versus

1. The Executive Engineer, Nurpur Division, H.P.P.W.D., Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Jawali Division, Jawali, District Kangra, H.P.

..Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. S.D.Sharma, Adv.
For the Respondent(s)	: Sh. Tarsem Kumar, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Birbal s/o Shri Tota Ram, r/o Village Dev Bharari, P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. during May 1988 by (i) the Executive Engineer, Nurpur Division, H.P.P.W.D., Nurpur, Tehsil Nurpur, District Kangra, H.P. (ii) the Executive Engineer, H.P.P.W.D. Jawali Division, Jawali, District Kangra, H.P., who has worked as beldar on daily wages basis and has raised his industrial dispute after more than 25 years, *vide* demand notice dated 24-11-2013 allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 62 days during February, 1987 to May, 1988 respectively and delay of more than 25 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/managements?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as beldar on daily wages in the month of August, 1985 in HPPWD Division Nurpur for the construction of Bodh-Chakki Dhar-Aund Haddal and Suliali to Dev Barari roads and at other sites adjoining to it. But, his services were disengaged orally in September, 1988. The petitioner had worked in the construction of roads to the villages and on national highway. He had worked with full zeal and devotion and there was no complaint against his work and conduct. He had completed 240 days in each calendar year. His disengagement was unfair, unjust, illegal, arbitrary, malafide and unconstitutional. After his termination, the petitioner had made several verbal requests to the respondents and every time he was given assurance that he would be re-engaged shortly. However, when he was not re-engaged for long, he had made written request to the department, but without success. A resolution on behalf of retrenched workmen had also been sent to Assistant Registrar, Hon’ble H.P. State Administrative Tribunal, Shimla, which is pending. Due to poverty and illiteracy, the petitioner could not pursue his case

before the appropriate forum. Besides this, he had been requesting the official of the department to re-engage him, which was being put off one pretext or the other. A junior, named Smt. Kusam Lata is working with the respondent. The oral termination of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for short). Apart from this, the employer was also bound to follow the provisions of Sections 25-G and 25-H of the Act. Retaining of juniors and engaging fresh hands after the disengagement of the petitioner is violative of the provisions of Sections 25-G and 25-H of the Act.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

"that the disengagement of the petitioner from service *w.e.f.* September 1988 may kindly be quashed and set aside. The department may be directed to re-engage the petitioner in service with past seniority and back wages till re-engagement and the benefits of this continuity all consequential benefits forthwith, any other relief, which this Hon'ble Court may deem fit in the given facts and circumstances may kindly be passed in favour of petitioner in the interest of justice and law of equity"

3. On notice, the respondents appeared. They filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on the grounds of delay and laches have been taken.

On merits, it is denied that the services of the petitioner had been engaged as beldar in August, 1985 in HPPWD Division, Nurpur. It is also denied that the services of the petitioner were terminated in the month of September, 1988. It is asserted that he was engaged as daily wager by HPPWD Sub-Division Suliali and had worked intermittently from February, 1987 upto May, 1988. The petitioner thereafter had left the work of his own sweet will and had never approached the department. It is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It is denied that the petitioner had completed 240 days in each calendar year. It is admitted that HPPWD Division Nurpur was involved in construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. It was denied that juniors to the petitioner had been engaged by the respondent. It is asserted that no junior had been engaged nor retained in service by the respondents, so there was no violation of the provisions of the Act. Since, the petitioner had not fulfilled the criteria of Section 25-B of the Act, there was no need to serve a notice upon him as required under Section 25-F of the Act. The services of the petitioner had never been terminated by the respondents, rather he had left the work in the month of May, 1988. It is stated that only those workers were regularized by the respondents who had fulfilled the requisite criteria of regularization as per government policy.

In these circumstances, the respondents pray that the petition in hand be dismissed.

4. No rejoinder was intended to be filed as per the separate statement of the Learned Counsel for the petitioner recorded on 10-5-2018 and placed on the file.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 10-5-2018:—

- (1) Whether termination of services of the petitioner by the respondents during May, 1988 is/was illegal and unjustified as alleged? ..OPP.

- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged? ..*OPR*.

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Birbal appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A. The respondents examined one Shri Dinesh Kumar Dhiman, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of Notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23-7-1994 as Ex. RW1/C, copy of office order dated 29-11-2010 as Ex. RW1/D, copy of letter dated 19-8-1998 as Ex. RW1/E, copy of application dated 18-12-1999 filed by Kusum Lata as Ex. RW1/F, copy of letter dated 18-1-2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of working days chart of Smt. Kusum Lata as Ex. RW1/I & Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Yes
Issue No. 4	: Not pressed
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Birbal (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification No. PBW-(A)-A(1)17/94. He denied that he had only worked with the respondents for the months of February, October and December 1987 and May, 1988. Volunteered that, he had worked regularly from August, 1985 upto September, 1988. He denied that he had never worked with the respondents from August, 1985 upto September, 1988 regularly. He denied that no breaks had been given to him by the department. He also denied that he was

never disengaged by the respondent/department. He further denied that the respondents had not kept at work any junior. He feigned ignorance that Smt. Kusum Lata was appointed as daily waged beldar in HPPWD Division Dalhousie in the year 1983. He admitted that he works as an agriculturist and these days is earning his livelihood by doing agricultural chores. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

12. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

13. In the cross-examination, he admitted that earlier Jawali Division was a part of Nurpur Division. He also admitted that from the year 1984 upto the year 1990, the work of Aund Haddal Chakki Dhar road continued. He feigned ignorance that the petitioner alongwith others had been engaged on daily wage basis for the said work. He denied that from August, 1985 upto September, 1988, the petitioner had regularly worked and had completed 240 days each year. Volunteered that, as per their record, the petitioner had only worked for 62 days. He denied that the respondents had regularized junior workers, self stated that the respondents had not kept at work any junior. He denied that the services of the petitioner had been illegally terminated by the respondent.

14. Ex. RW1/B is the copy of Notification dated 21st July, 1994 with regard to shift of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

15. Ex. RW1/C is the copy of Office Order dated 23-7-1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

16. Ex. RW1/D is the copy of another Office Order dated 29-11-2010 with regard to implementation of the award of this Court dated 22-12-2007.

17. Ex. RW1/E is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

18. Ex. RW1/F is the copy of letter dated 18-12-1999 regarding representation of Smt. Kusum Lata.

19. Ex. RW1/G is the copy of letter dated 18-1-2000 written by the Engineer-in-Chief HPPWD Shimla to the Superintending Engineer, 9th Circle, HP HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

20. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

21. Ex. RW1/I is the copy of working days chart of Smt. Kusum Lata working under Banikhet Sub-Division HPPWD Banikhet.

22. Ex. RW1/J is the copy of working days chart of Smt. Kusum Lata working under Suliali Sub-Division HPPWD Suliali.

23. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondents in August, 1985 and that he had worked as such upto September, 1988. The respondents took the stand that the petitioner had been engaged as a daily waged beldar in HPPWD Sub-Division Suliali *w.e.f.* February, 1987 and that he had worked intermittently upto May, 1988. The petitioner denied this case of the respondent. He while under

cross-examination categorically denied that he had worked with the department for the months of February, October and December, 1987 and May, 1988 only. However, the respondents have place and proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. Its perusal discloses that the services of the petitioner were engaged by respondent No. 2 in the month of February, 1987 for the first time as daily waged beldar and he had worked as such upto May, 1988. The claimant/petitioner has not placed and exhibited on record any document to show that he had regularly worked with the respondents from August, 1985 upto September, 1988.

24. As per the mandays chart Ex. RW1/H, the petitioner had only worked for 40 days in the year 1987 and 22 days in the year 1988. Thus, in his total service for a period of more than one year in between February, 1987 to May, 1988, he had only worked for 62 days. Be it recorded here that the petitioner had not worked for more than 240 days preceding 12 calendar months from the date of his termination, which is claimed to have taken place by the petitioner as per petition/statement of claim in September, 1988. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to the alleged illegal termination. It is established on record that the petitioner had not worked for 240 days preceding 12 calendar months from the date of his termination. It is evident from the mandays chart that from February, 1987 till May, 1988 the petitioner had only worked for 62 days, therefore, immediately in the preceding 12 calendar months from the month of termination, the petitioner had not worked for 240 days, so as to meet the requirement of law of having a continuous service of one year. Thus, it was not required of the respondents to have issued a notice as provided under Section 25-F of the Act. So, it can safely be held that the respondents had not violated the provisions of Section 25-F of the Act, as claimed by the petitioner.

25. In so far as violation of the provisions of Section 25-G of the Act is concerned, it deals with the procedure for retrenchment to be adopted by the employer. In the case on hand, the petitioner has emphasized that juniors to him were retained, whereas he had been disengaged. In his affidavit Ex. PW1/A, the petitioner has stated that one Smt. Kusum Sharma had been engaged, who was junior to him and was retained in service. To appreciate the plea so raised by the petitioner, it would be relevant to go through the evidence so as to see when said Smt. Kusum Sharma had been engaged. It was vociferously argued by the learned Assistant District Attorney for the respondents that Smt. Kusum Sharma d/o Shri Daulat Ram was engaged as a helper on daily waged basis in HPPWD Dalhousie Division, as reflected in the affidavit of RW1 Shri Dinesh Kumar Dhiman, being in the shape of his examination-in-chief. Then, as per the copy of working days chart pertaining to Smt. Kusum Lata, Ex. RW1/I, she had initially been engaged in the month of November, 1983 in Sub-Division No.1 HPPWD, Banikhet and that she had continued to work as such there upto November, 1988. Placed on record is also her representation to the Engineer-in-Chief, HPPWD Shimla, copy of which is Ex. RW1/F. On her representation, it is evident that she stood transferred and posted as a daily waged Store Clerk from 7th Circle HPPWD Dalhousie to 9th Circle HPPWD Nurpur. Reference in this regard can be made to the copy of letter dated 18-1-2000 of Engineer-in-Chief, HPPWD Shimla, Ex. RW1/G. On allotment of one post of Store Clerk in 9th Circle, HPPWD Nurpur, *vide* the aforesaid letter, Smt. Kusum Lata was adjusted as such there, where she has been working regularly from the year 2000 upto January, 2009, as is evident from the copy of her working days chart, Ex. RW1/J. So, she cannot be termed as a junior to the petitioner. It is nowhere the case of the petitioner that the services of said Smt. Kusum Lata had ever been disengaged at any point of time. Rather she appears to have been working with the HPPWD Division Nurpur. Her joining in the 9th Circle HPPWD Nurpur, on her request in the month of February, 2000 cannot make her a junior to the petitioner, particularly when her year of joining is much prior to that of the petitioner in the HPPWD department *i.e.* she was engaged in the year 1983, whereas the petitioner as per the

record had initially been engaged in the year 1987. So, it cannot be said that Smt. Kusum Lata being a junior to the petitioner had been retained in service by the respondent. No other person has been named in the pleadings or evidence by the petitioner, who being junior to him had been retained in service when he had been disengaged. Therefore, it cannot be said that the respondents had violated the principle of 'last come first go', as envisaged in Section 25-G of the Act.

26. Although, it is claimed by the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondents, but there is no documentary, cogent, convincing and reliable evidence on the file in this regard. That being so, the provisions of Section 25-H of the Act are not attracted in this case. That apart and more importantly, the petitioner was not entitled to invoke the provisions of Section 25-H of the Act and seek re-employment by citing the case of other employees, who were already in employment and whose services were regularized by the respondents on the basis of their service records in terms of the rules. To my mind, the regularization of the employees already in service does not give any right to the retrenched employee so as to enable him to invoke Section 25-H of the Act for claiming re-employment in the services. The reason is that by such act the employer does not offer any fresh employment to any person to fill any vacancy in their set up, but they simply regularize the services of any employee already in service. Such an act does not amount to filling any vacancy. The expression 'employment' signifies a fresh employment to fill the vacancies, whereas the expression 'regularization of the service' signifies that the employee, who is already in service, his services are regularized as per service regulations.

27. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

28. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4:

29. Not pressed.

Relief:

30. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 18th day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 255/2016
 Date of Institution : 03-5-2016
 Date of Decision : 18-03-2019

Shri Kuldeep Singh s/o Shri Sarwan Singh, r/o V.P.O. Aund, Tehsil Nurpur, District Kangra, H.P.
..Petitioner.

Versus

1. The Executive Engineer, Nurpur Division, H.P.P.W.D., Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Jawali Division, Jawali, District Kangra, H.P.

..Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.D.Sharma, Adv.
 For the Respondent(s) : Sh. Tarsem Kumar, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Kuldeep Singh, s/o Sarwan Singh, r/o V.P.O. Aund, Tehsil Nurpur, District Kangra, H.P. during January, 1986 by (i) the Executive Engineer, H.P.P.W.D. Division Nurpur District Kangra, H.P. (ii) the Executive Engineer, H.P.P.W.D. Jawali Division, Jawali, District Kangra, H.P., who has worked as beldar on daily wages basis and has raised his industrial dispute *vide* demand notice dated nil received in Labour Office Dharamshala on 26-11-2013 after more than 27 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 25 days during January, 1986 delay of more than 27 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/managements?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as beldar on daily wages in the month of March, 1986 in HPPWD Division Nurpur for the construction of Bodh-Chakki Dhar-Aund Haddal and Suliali to Dev Barari roads and at other sites adjoining to it. But, his services were disengaged orally in October, 1990. The petitioner had worked in the construction of roads to the villages and on national highway. He had worked with full zeal and devotion and there was no complaint against his work and conduct. He had completed 240 days in each calendar year. His disengagement was unfair, unjust, illegal, arbitrary, mala fide and unconstitutional. After his termination, the petitioner had made several verbal requests to the respondents and every time he was given assurance that he would be re-engaged shortly. However, when he was not re-engaged for long, he had made written request to the department, but without success. A resolution on behalf of retrenched workmen had also been sent to Assistant Registrar, Hon'ble H.P. State Administrative Tribunal, Shimla, which is

pending. Due to poverty and illiteracy, the petitioner could not pursue his case before the appropriate forum. Besides this, he had been requesting the official of the department to re-engage him, which was being put off on pretext or the other. A junior, named Smt. Kusam Lata is working with the respondent. The oral termination of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for short). Apart from this, the employer was also bound to follow the provisions of Sections 25-G and 25-H of the Act. Retaining of juniors and engaging fresh hands after the disengagement of the petitioner is violative of the provisions of Sections 25-G and 25-H of the Act.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“that the disengagement of the petitioner from service *w.e.f.* March, 1989 be quashed and set aside. The department be directed to re-engage the petitioner in service with past seniority and back wages till re-engagement and the benefits of the continuity and all consequential benefits forthwith and any other relief, as deemed fit in the given facts and circumstances be passed in favour of petitioner in the interest of justice and law of equity”.

3. On notice, the respondents appeared. They filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on the grounds of delay and laches have been taken.

On merits, it is denied that the services of the petitioner had been engaged as beldar in March, 1986 in HPPWD Division, Nurpur. It is also denied that the services of the petitioner were terminated in the month of October, 1990. It is asserted that he was engaged as daily wager by HPPWD Sub-Division Suliali and had worked intermittently in January, 1986. The petitioner thereafter had left the work of his own sweet will and had never approached the department. It is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It is denied that the petitioner had completed 240 days in each calendar year. It is admitted that HPPWD Division Nurpur was involved in construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. It was denied that juniors to the petitioner had been engaged by the respondent. It is asserted that no junior had been engaged nor retained in service by the respondents, so there was no violation of the provisions of the Act. Since, the petitioner had not fulfilled the criteria of Section 25-B of the Act, there was no need to serve a notice upon him as required under Section 25-F of the Act. The services of the petitioner had never been terminated by the respondents, rather he had left the work in the month of January, 1986. It is stated that only those workers were regularized by the respondents who had fulfilled the requisite criteria of regularization as per government policy.

In these circumstances, the respondents pray that the petition in hand be dismissed.

4. No rejoinder was intended to be filed as per the separate statement of the learned Counsel for the petitioner recorded on 10-5-2018 and placed on the file.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 10-5-2018:

- (1) Whether termination of services of the petitioner by the respondents during January, 1986 is/was illegal and unjustified as alleged? ..*OPP.*

- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged? ..*OPR*.

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Kuldeep Singh appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A. The respondents examined one Shri Dinesh Kumar Dhiman, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of Notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23-7-1994 as Ex. RW1/C, copy of office order dated 29-11-2010 as Ex. RW1/D, copy of letter dated 19-8-1998 as Ex. RW1/E, copy of application dated 18-12-1999 filed by Kusum Lata as Ex. RW1/F, copy of letter dated 18-1-2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of working days chart of Smt. Kusum Lata as Ex. RW1/I & Ex. RW1/J.

7. Arguments of the Learned Counsel for the petitioner and Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Yes
Issue No. 4	: Not pressed
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Kuldeep Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification No. PBW-(A)-A(1)17/94. He denied that he had only worked with the respondents for the month of January, 1986. Volunteered that, he had worked regularly from March, 1986 upto October, 1990. He denied that he had never worked with the respondents from March, 1986 upto October, 1990 regularly. He denied that no breaks had been given to him by

the department. He also denied that he was never disengaged by the respondent/department. He further denied that the respondents had not kept at work any junior. He feigned ignorance that Smt. Kusum Lata was appointed as daily waged beldar in HPPWD Division Dalhousie in the year 1983. He admitted that he works as an agriculturist and these days is earning his livelihood by doing agricultural chores. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

12. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

13. In the cross-examination, he admitted that earlier Jawali Division was a part of Nurpur Division. He also admitted that from the year 1984 upto the year 1990, the work of Aund Haddal Chakki Dhar road continued. He feigned ignorance that the petitioner alongwith others had been engaged on daily wage basis for the said work. He denied that from March, 1986 upto October, 1990, the petitioner had regularly worked and had completed 240 days each year. Volunteered that, as per their record, the petitioner had only worked for 25 days. He denied that the respondents had regularized junior workers, self stated that the respondents had not kept at work any junior. He denied that the services of the petitioner had been illegally terminated by the respondents.

14. Ex. RW1/B is the copy of Notification dated 21st July, 1994 with regard to shift of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

15. Ex. RW1/C is the copy of Office Order dated 23-7-1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

16. Ex. RW1/D is the copy of another Office Order dated 29-11-2010 with regard to implementation of the award of this Court dated 22-12-2007.

17. Ex. RW1/E is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

18. Ex. RW1/F is the copy of letter dated 18-12-1999 regarding representation of Smt. Kusum Lata.

19. Ex. RW1/G is the copy of letter dated 18-1-2000 written by the Engineer-in-Chief HPPWD Shimla to the Superintending Engineer, 9th Circle, HP HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

20. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

21. Ex. RW1/I is the copy of working days chart of Smt. Kusum Lata working under Banikhet Sub-Division HPPWD Banikhet.

22. Ex. RW1/J is the copy of working days chart of Smt. Kusum Lata working under Suliali Sub-Division HPPWD Suliali.

23. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondents in March, 1986 and that he had worked as such upto October, 1990. The respondents took the stand that the petitioner had been engaged as a daily waged beldar in HPPWD Sub-Division Suliali *w.e.f.* January, 1986 and that he had worked intermittently. The

petitioner denied this case of the respondent. He while under cross-examination categorically denied that he had worked with the department for the month of January, 1986 only. However, the respondents have placed and proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. Its perusal discloses that the services of the petitioner were engaged by respondents No. 2 in the month of January, 1986 for the first time as daily waged beldar. The claimant/petitioner has not placed and exhibited on record any document to show that he had regularly worked with the respondents from March, 1986 upto October, 1990.

24. As per the mandays chart Ex. RW1/H, the petitioner had only worked for 25 days in the month of January, 1986. Thus, in his total service for a period of one month in January, 1986, he had only worked for 25 days. Be it recorded here that the petitioner had not worked for more than 240 days preceding 12 calendar months from the date of his termination, which is claimed to have taken place by the petitioner as per petition/statement of claim in October, 1990. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to the alleged illegal termination. It is established on record that the petitioner had not worked for 240 days preceding 12 calendar months from the date of his termination. It is evident from the mandays chart that in the month of January, 1986, the petitioner had only worked for 25 days, therefore, immediately in the preceding 12 calendar months from the month of termination, the petitioner had not worked for 240 days, so as to meet the requirement of law of having a continuous service of one year. Thus, it was not required of the respondents to have issued a notice as provided under Section 25-F of the Act. So, it can safely be held that the respondents had not violated the provisions of Section 25-F of the Act, as claimed by the petitioner.

25. In so far as violation of the provisions of Section 25-G of the Act is concerned, it deals with the procedure for retrenchment to be adopted by the employer. In the case on hand, the petitioner has emphasized that juniors to him were retained, whereas he had been disengaged. In his affidavit Ex. PW1/A, the petitioner has stated that one Smt. Kusum Sharma had been engaged, who was junior to him and was retained in service. To appreciate the plea so raised by the petitioner, it would be relevant to go through the evidence so as to see when said Smt. Kusum Sharma had been engaged. It was vociferously argued by the learned Assistant District Attorney for the respondents that Smt. Kusum Sharma d/o Shri Daulat Ram was engaged as a helper on daily waged basis in HPPWD Dalhousie Division, as reflected in the affidavit of RW1 Shri Dinesh Kumar Dhiman, being in the shape of his examination-in-chief. Then, as per the copy of working days chart pertaining to Smt. Kusum Lata, Ex. RW1/I, she had initially been engaged in the month of November, 1983 in Sub-Division No.1 HPPWD, Banikhet and that she had continued to work as such there upto November, 1988. Placed on record is also her representation to the Engineer-in-Chief, HPPWD Shimla, copy of which is Ex. RW1/F. On her representation, it is evident that she stood transferred and posted as a daily waged Store Clerk from 7th Circle HPPWD Dalhousie to 9th Circle HPPWD Nurpur. Reference in this regard can be made to the copy of letter dated 18-1-2000 of Engineer-in-Chief, HPPWD Shimla, Ex. RW1/G. On allotment of one post of Store Clerk in 9th Circle, HPPWD Nurpur, *vide* the aforesaid letter, Smt. Kusum Lata was adjusted as such there, where she has been working regularly from the year 2000 upto January, 2009, as is evident from the copy of her working days chart, Ex. RW1/J. So, she cannot be termed as a junior to the petitioner. It is nowhere the case of the petitioner that the services of said Smt. Kusum Lata had ever been disengaged at any point of time. Rather she appears to have been working with the HPPWD Division Nurpur. Her joining in the 9th Circle HPPWD Nurpur, on her request in the month of February, 2000 cannot make her a junior to the petitioner, particularly when her year of joining is much prior to that of the petitioner in the HPPWD department *i.e.* she was engaged in the year 1983, whereas the petitioner as per the record had initially been engaged in the year 1986. So, it cannot be said that Smt. Kusum Lata being a junior to the petitioner had been retained in service by the respondent. No other person

has been named in the pleadings or evidence by the petitioner, who being junior to him had been retained in service when he had been disengaged. Therefore, it cannot be said that the respondents had violated the principle of 'last come first go', as envisaged in Section 25-G of the Act.

26. Although, it is claimed by the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondents, but there is no documentary, cogent, convincing and reliable evidence on the file in this regard. That being so, the provisions of Section 25-H of the Act are not attracted in this case. That apart and more importantly, the petitioner was not entitled to invoke the provisions of Section 25-H of the Act and seek re-employment by citing the case of other employees, who were already in employment and whose services were regularized by the respondents on the basis of their service records in terms of the rules. To my mind, the regularization of the employees already in service does not give any right to the retrenched employee so as to enable him to invoke Section 25-H of the Act for claiming re-employment in the services. The reason is that by such act the employer does not offer any fresh employment to any person to fill any vacancy in their set up, but they simply regularize the services of any employee already in service. Such an act does not amount to filling any vacancy. The expression 'employment' signifies a fresh employment to fill the vacancies, whereas the expression 'regularization of the service' signifies that the employee, who is already in service, his services are regularized as per service regulations.

27. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

28. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4:

29. Not pressed.

Relief:

2. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 18th day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No.	: 299/2015
Date of Institution	: 13-7-2015
Date of Decision	: 20-03-2019

Shri Surender Pandey s/o Shri Raj Bahadur, r/o Village Phool, P.O. Sansarpur, District Riva, Madhya Pradesh. ..Petitioner.

Versus

The Employer, M/s Youngman Synthetics, Village Gondpur Jaichand, Tehsil Haroli, District Una, H.P. ..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. R.K. Soni, Adv.
For the Respondent	: Sh. Sanjeev Gupta, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Surender Pandey s/o Shri Raj Bahadur, r/o Village Phool, P.O. Sansarpur, District Riva, Madhya Pradesh *w.e.f.* 18-03-2014 by the Employer, M/s Youngman Synthetics, Village Gondpur Jaichand, Tehsil Haroli, District Una, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed by the respondent as a Yarn Checker on a monthly salary of Rs.12,500/-. He had worked under the respondent as a regular private worker from 27th July, 2010 upto 15th December, 2013. Thereafter, he had proceeded on leave for 20 days and when had telephonically asked to report back on work, he was informed by the Managing Director of the respondent that he should not come to join the duty for a month more. When thereafter, he had gone to join his duties, the respondent had refused to take him back on the job. He had made a request to the Managing Director that he after availing the sanctioned leave was reporting back on duty, so he may be allowed to do so, but without success. The petitioner then had filed an application before Labour Inspector, Una on 24-3-2014. The services of the petitioner had been dispensed with by the respondent without any rhyme or reason. A person who had joined with him is still in service of the respondent. The action of the respondent was wrong, illegal and arbitrary.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the respondent be directed to re-engage the services of the petitioner with all consequential benefits including the back wages, salary etc.”.

3. On notice, the respondent appeared. It filed a detailed reply through its authorized signatory, controverting the averments made in the petition/statement of claim. It is asserted that the petitioner had been working with the respondent as a checker from 1-9-2013 and not from 27-7-2010. The petitioner had only worked for 94.5 days with the respondent-company from 1-9-2013 upto 15-12-2013. The petitioner had gone on leave only for 16 days *i.e.* from 30-12-2013 to 15-1-2014 and not for 20 days, but he remained continuously absent thereafter from his duty without any prior intimation. The petitioner had never asked the respondent to resume his duties after the expiry of the sanctioned leave. He had misbehaved with the seniors of the respondent. The respondent had never stopped the petitioner from resuming his duty. No person junior to the petitioner had been retained in service. The respondent was and is still ready to take back the petitioner on job, so he is not entitled for any benefits and compensation. It is the petitioner who is not interested to return back to his job.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 19-12-2016:—

- (1) Whether termination of the services of the petitioner by the respondent *w.e.f.* 18-03-2014 is/was illegal and unjustified as alleged? *..OPP.*
- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *..OPP.*

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Surender Pandey appeared as PW1 and tendered in evidence his statement by way of affidavit as Ex. PW1/A, copy of letter dated 26-3-2014 as Ex. PW1/B and copy of leave application form as Ex. PW1/C. The respondent examined one Shri Mahesh Kumar as RW1, who tendered his statement by way of affidavit as Ex. RW1/A and placed on the file copy of attendance record as Ex. RW1/B, copy of EPF slip as Ex. RW1/C and copy of working days detail as Ex. RW1/D.

7. Arguments of the Learned Counsel for the parties heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: No
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Surender Pandey (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he denied that he had joined on 1-9-2013. He denied that he was issued a joining letter on 1-9-2013 by the respondent. Volunteered that, it was given on 27-4-2009. He admitted that for applying the leave, it is to be given in writing to the respondent. He was also categorical that his leave had been sanctioned from 31-12-2013 to 15-1-2014. He also admitted that except for this period he had not applied for any other leave. He denied that he was working with the respondent on provisional basis. He also denied that he had only worked for 95 days. Self stated that he had worked for three years. He specifically denied that he had never been removed by the respondent.

12. Ex. PW1/B is the copy of letter written by the petitioner to the General Manager of the respondent.

13. Ex. PW1/C is the copy of leave application form of the petitioner

14. Conversely, Shri Mahesh Kumar, Senior Executive HR Manager, M/s Youngman Synthetics, Una (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

15. In the cross-examination, he stated that the attendance register (Ex. RW1/C) starts from January, 2013. He had not brought the attendance register for the year 2012. He denied that no appointment letter is issued by the respondent. He denied that the petitioner had joined the respondent on 27-1-2010 and had worked in it upto 30-1-2013. He was categorical that the petitioner had proceeded on fifteen days leave. Volunteered that, he had returned back late by two months. He denied that whenever the petitioner had reported to the respondent to join back, its management had misbehaved with him. He denied that without any reason and without a notice the petitioner had been terminated. He denied that only after receipt of summons from the Labour office, they had issued a termination notice on dated 26-3-2014. He denied that the petitioner had wrongly been removed from service by the respondent.

16. Ex. RW1/B is the copy of attendance register in which the name of the petitioner figures at serial No.72.

17. Ex. RW1/C is the copy of EPF statement relating to the petitioner.

18. Ex. RW1/D is the copy of working days detail of the petitioner.

19. The version of the petitioner is that his services were engaged as a Yarn Checker by the respondent on regular basis at a fixed salary of Rs.12,500/- per month from 27th July, 2010 and that he had worked as such upto 15th December, 2013. The respondent admitted the fact that the petitioner had been engaged by it as a Checker. However, it took the stand that he had been engaged only on 1-9-2013. Although, the petitioner denied the fact that he had been engaged by the respondent on 1-9-2013 and had volunteered to state that he had worked with the respondent for three years but, however, placed on record by the respondent is a copy of working days detail of the petitioner as Ex. RW1/D. Its perusal reveals that the date of joining of the petitioner with the respondent is 1-9-2013. Ocular evidence has also been led to this effect by the respondent in the shape of testimony of Shri Mahesh Kumar (RW1). The claimant/petitioner has not placed and exhibited on record any document to show that he was engaged by the respondent on 27-7-2010 and that he had worked in it for about three years, as claimed.

20. A plea was taken by the respondent that the petitioner had abandoned the work himself. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In *Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand* reported in [2019 FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving abandonment is upon the management. Simply because a workman fails to report for duty after availing the sanctioned leave, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon him to resume the duties after his leave period. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Thus, the plea of abandonment put forth by the respondent/employer is not established.

21. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of 12 calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. As per the copy of working days detail, Ex. RW1/D, the petitioner had only worked for a total of 94.5 days from September, 2013 upto December, 2013. Therefore, the provisions of Section 25-F of the Act are not attracted in this case. It is not the case of the petitioner that at the time of the termination of his services, any person junior to him was retained in service by the respondent. Even, it is not the case of the petitioner that after his alleged disengagement, new/fresh hands have been engaged by the respondent. That being so, the provisions of Sections 25-G and 25-H of the Act are also not attracted in this case.

22. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Relief:

23. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	: 302/2015
Date of Institution	: 16-7-2015
Date of Decision	: 20-03-2019

Shri Khem Singh s/o Shri Thanu Ram, r/o Village Moraksh, P.O. Voh, Tehsil Shahpur,
District Kangra, H.P. ..Petitioner.

Versus

The Employer, M/s Youngman Synthetics, Village Gondpur Jaichand, Tehsil Haroli,
District Una, H.P. ..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R.K. Soni, Adv.
For the Respondent : Sh. Sanjeev Gupta, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Khem Singh s/o Shri Thanu Ram, r/o Village Moraksh, P.O. Voh, Tehsil Shahpur, District Kangra, H.P. *w.e.f.* 18-03-2014 by the Employer, M/s Youngman Synthetics, Village Gondpur Jaichand, Tehsil Haroli, District Una, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed by the respondent as a Machine Operator on regular basis on fixed salary of Rs.11,500/- per month. He had continuously worked as such with the respondent-Company upto 14-2-2014. Thereafter, he had proceeded on leave and had come to join his duties on 18-3-2014, but the respondent had refused to take him back on the job. He had made a request to the Managing Director of the respondent that he after availing the sanctioned leave was reporting back on duty, so he may be allowed to do so, but without success. He rather, was abused and asked to submit his resignation in writing. When he did not do so, he was treated badly and was even not given the salary for the month of February, 2014. The petitioner then had filed an application before Labour Officer, Una on 21-3-2014. However, when the respondent had come to know about the same, it served a termination order dated 22-3-2014 upon him by post. So, the termination order was not valid in the eyes of law. After filing of the complaint, the parties had been summoned by the Labour Officer, Una, but the matter could not be reconciled. A report was thereafter sent by the Labour Officer to Labour Commissioner, Shimla, when the instant reference was submitted to this Court. The services of the petitioner had been dispensed with by the respondent without any rhyme or reason and also without paying him his one month's salary.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“he be reinstated in service as a Machine Operator in the respondent-company and his services be treated as regular. He be paid all the back wages/salary till date, with other benefits, as per rules”.

On notice, the respondent appeared. It filed a detailed reply through its authorized signatory, controverting the averments made in the petition/statement of claim. It is asserted that the petitioner had been working with the respondent as an operator from 1-11-2013 and not from

17-8-2011. No notice was issued to the petitioner that he was removed from service, nor his salary had been withheld. He was never abused. The petitioner had only worked for six months with the respondent. One month notice was served upon. He had misbehaved with the officers of the respondent. The petitioner had never been removed from service, rather he himself had abandoned the work. The respondent was and is still ready to take back the petitioner on job, so he is not entitled to any compensation. It is the petitioner who is not interested to report back on work.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 24-10-2016:—

- (1) Whether termination of the services of petitioner by the respondent *w.e.f.* 18-03-2014 is/was improper and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Khem Singh appeared as PW1 and tendered in evidence his statement by way of affidavit as Ex. PW1/A, copy of letter dated 26-3-2014 as Ex. PW1/B, copy of letter dated 7-5-2016 as Ex. PW1/C and copy of leave application form as Ex. PW1/D. The respondent examined one Shri Mahesh Kumar as RW1, who tendered his statement by way of affidavit as Ex. RW1/A and placed on the file copy of register of adult workers as Ex. RW1/B, copy of attendance register as Ex. RW1/C, copy of EPF Slip as Ex. RW1/D, copy of notice dated 22-3-2014 as Ex. RW1/E and copies of postal receipts as Ex. RW1/F.

7. Arguments of the learned Counsel for the parties heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Yes
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Khem Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he admitted that earlier he had been working as a Machine Operator with a firm in District Thane, Maharashtra. He had worked there for five years. No letter was issued to him by the respondent at the time of his appointment. He denied that he had been issued a letter (Mark-A) on 1-11-2013 by the company at the time of his joining. He admitted that a leave form has to be filled in as and when applying for the leave to the company. He admitted that after the leave he had come to company on 21-3-2014. He denied that he was told by the company that due to recession, the work had been stopped. He denied that he was given a month's notice that day. Volunteered that, it was given after his disengagement. He denied that he had never come to the respondent after 21-3-2014. He denied that he had filed an application before the Labour Inspector, Una, after the issuance of the notice by the respondent. He admitted that his services were provisional and not regular. He was not aware that the respondent was doing seasonal work. He denied that he had only worked for 61 days with the respondent. Self stated that, he had worked for 2½ years.

12. Ex. PW1/B is the copy of letter dated 26-3-2014 written by the petitioner to the General Manager, Youngman Synthetics Pvt. Ltd. Gondpur Jai Chand, Una.

13. Ex. PW1/C is the copy of application to the Labour Inspector, Una, H.P. by the petitioner.

14. Ex. PW1/D is the copy of leave application of the petitioner.

15. Conversely, Shri Mahesh Kumar, Senior Executive HR Manager, M/s Youngman Synthetics, Una (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

16. In the cross-examination, he stated that the attendance register (Ex. RW1/C) starts from January, 2013. He had not brought the attendance register for the year 2012. He denied that no appointment letter is issued by the respondent. He denied that the petitioner had joined the respondent on 17-8-2012 and had worked in it upto 15-3-2014. He was categorical that the petitioner had proceeded on one month's leave. Volunteered that, he had returned back late by a week. He denied that whenever the petitioner had reported to the respondent to join back, its management had misbehaved with him. He denied that without any reason and without a notice the petitioner had been terminated. He denied that only after receipt of summons from the Labour office, they had issued a termination notice on dated 26-3-2014. He denied that the petitioner had wrongly been removed from service by the respondent.

17. Ex. RW1/B is the copy of register of adult workers which shows the name of the petitioner at serial No. 196.

18. Ex. RW1/C is the copy of attendance register in which the name of the petitioner figures at serial No. 69.

19. Ex. RW1/D is the copy of EPF statement relating to the petitioner.

20. Ex. RW1/E is the copy of notice dated 22-3-2014 regarding notice for break service to the petitioner.

21. Ex. RW1/F is the copy of postal receipts.

22. Mark-A is the copy of appointment letter of the petitioner, while Mark-B is the copy of his working days detail.

23. The version of the petitioner is that his services were engaged as a Machine Operator by the respondent on regular basis at fixed salary of Rs.11,500/- per month and that he had worked as such upto 14-2-2014. The respondent admitted the fact that the petitioner had been engaged by it as an Operator. However, it took the stand that he had been engaged only on 1-11-2013. Although, the petitioner denied the fact that he had been engaged by the respondent on 1-11-2013 and had volunteered to state that he had worked with the respondent for 2 ½ years, but, however, placed on record by the respondent is a copy of appointment letter of the petitioner as Mark-A. Its perusal reveals that the petitioner had been kept as an Operator on 1-11-2013 by the respondent. Copy of working days detail relating to the petitioner as Mark-B also reflects the date of his joining with the respondent as 1-11-2013. Ocular evidence has also been led to this effect by the respondent in the shape of testimony of Shri Mahesh Kumar (RW1). The claimant/petitioner has not placed and exhibited on record any document to show that he was engaged by the respondent prior to 1-11-2013 and that he had worked in it for about 2 ½ years, as claimed.

24. A plea was taken by the respondent that the petitioner had abandoned the work himself. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand*** reported in **[2019 (160) FLR 16]**, it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty after availing the sanctioned leave, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon him to resume the duties after his leave period. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Thus, the plea of abandonment put forth by the respondent/employer is not established.

25. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of 12 calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. As per the copy of working days detail, Mark-B, the petitioner had only worked for a total of 61 from November, 2013 upto January, 2014. Therefore, the provisions of Section 25-F of the Act are not attracted in this case. It is not the case of the petitioner that at the time of the termination of his services, any person junior to him was retained in service by the respondent. Even, it is not the case of the petitioner that after his alleged disengagement, new/fresh hands have been engaged by the respondent. That being so, the provisions of Sections 25-G and 25-H of the Act are also not attracted in this case.

26. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3:

27. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has

been instituted by the petitioner with a mala fide intention to derive undue advantage(s). This issue is decided in favour of the respondent and against the petitioner.

Relief:

28. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No.	: 353/2016
Date of Institution	: 27-5-2016
Date of Decision	: 20-03-2019

Shri Prem Singh s/o Shri Durga Dass, r/o Village Nagahu, P.O. Kao, Tehsil Karsog, District Mandi, H.P.	..Petitioner.
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Versus

The Senior Executive Engineer, Electrical Division, H.P.S.E.B.L., Karsog, District Mandi, H.P.	..Respondent.
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Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. N.L. Kaundal, AR
	: Sh.. Vijay Kaundal, Adv.
For the Respondent	: Sh. Anand Sharma, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Prem Singh s/o Late Shri Durga Dass, r/o Village Nagahu, P.O. Kao, Tehsil Karsog, District Mandi, H.P. *w.e.f.* 14-02-1993 by the Senior Executive Engineer, Electrical Division, H.P.S.E.B.L. Karsog, District Mandi, H.P., who has worked as beldar on daily wages basis and has raised his industrial dispute after more than 21 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 28,

115 and 19 days during years 1991 1992 and 1993 respectively and delay of more than 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as daily rated Class-IV employee in the year 1991 and had worked as such upto the year 1993 regularly. He had been appointed in Karsog Division, District Mandi, H.P. He had completed 240 days during the period of his job. His services were terminated by the respondent without any rhyme or reason. It is asserted that while terminating the services of the petitioner, several juniors were re-engaged by the respondent. Many fresh hands were engaged by the respondent, but the petitioner was not called for re-engagement as required under Rule 81, 82 and 83 of the Industrial Disputes Rules framed by the government of Himachal Pradesh. It is asserted that the provisions of the Sections 25- G and 25-H had been violated while terminating the services of the petitioner which was inoperative, ineffective, invalid and illegal under the eyes of law. The petitioner was not given preference when fresh persons were engaged by the respondent. The petitioner is entitled for re-engagement with all consequential/monetary benefits as well as continuity in service as the respondent had violated the provisions of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for short). The action of the respondent/Board was discriminatory, arbitrary, illegal and unlawful.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“that this claim petition filed by the claimant be allowed and he be ordered to be reinstated/re-engaged with all consequential benefits including seniority from the initial date of appointment, continuity in service from the initial date of appointment and back wages from the date of illegal termination till the date of actual payment alongwith interest @ 9% per annum in the ends of law and justice.

Any other order deemed fit in the facts and circumstances of the case be passed in favour of the claimant and against the respondent department”.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, claim petition being bad for mis-joinder of necessary party, estoppel and that the petition suffered from the vice of delay and laches have been taken.

On merits, it is asserted that the petitioner was not appointed as a daily rated Class-IV employee, but he was engaged as a casual worker on 26-2-1991 for carrying out the works of casual nature on the availability of work. The petitioner had not acquired the status of temporary workman, however he had not completed 240 days continuous service in the preceding 12 calendar months from the date of his engagement. No notice and retrenchment compensation was paid to him. It is asserted that the petitioner had not completed one year service in all the calendar year *i.e.* 1991, 1992 and 1993, so no notice was required to be served and compensation given, as envisaged under section 25-F of the Act. Since, there is no violation of the provisions of Section 25-F of the Act, the provisions of Sections 25-G and 25-H the Act as well as Rule 81, 82 and 83 of the Industrial Dispute Rules are neither applicable nor attracted in the facts and circumstances of the case. The action of the respondent was perfectly legal, *intra-virus* and bona-fide.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 17-10-2017:—

- (1) Whether termination of services of petitioner by the respondent *w.e.f.* 14-02-1993 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (4) Whether claim petition is bad for mis-joinder of necessary party as alleged? ..*OPR.*
- (5) Whether the petitioner is estopped from filing claim petition by his act and conduct as alleged? ..*OPR.*
- (6) Whether the claim petition suffers from the vice of delay and laches as alleged? ..*OPR.*

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Prem Singh appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A. The respondent examined one Shri Brij Lal Koundal as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of mandays chart Ex. RW1/B.

7. Arguments of the Learned Counsel/AR for the petitioner and the learned Counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Yes
Issue No. 4	: Not pressed
Issue No. 5	: Not pressed
Issue No. 6	: Not pressed
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Prem Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he denied that he was doing seasonal work. Volunteered that, he was working on muster roll basis. He had worked in the field. He admitted that whenever there was work *qua* electricity line, he was being engaged. He admitted that on the completion of the work, he was being relieved. He admitted that he had not corresponded with the department. He denied that whenever he was being removed from work, he used to work in other government institutions. Volunteered that, he had been doing agricultural works. He denied that he had never worked continuously. He also denied that the department had never disengaged him from work and that he himself had left the work. He denied that he had never made written representation to the department or the Court. He further denied that after his disengagement no junior was kept at work. He also denied that as he had abandoned the work himself, so he was not called by the department for work.

12. Conversely, Shri Brij Lal Koundal, Senior Executive Engineer, Electric Division Karsog, District Mandi (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that as per the record, the petitioner had worked as a casual labourer from the year 1991 upto the year 1993. He further admitted that when the petitioner was kept at work, no appointment letter was issued. He categorically denied that the petitioner had completed 240 days in each year. He also denied that the petitioner had been removed from work on 14-2-1993. Volunteered that, he himself had left the work. He admitted that no correspondence was done by the department with the petitioner, on his not reporting on duty. He denied that juniors to the petitioner are still at work. Self stated that if at all there was anyone, he might have been kept on Court orders and he must have been working regularly. He also denied that fresh appointment had been made after disengagement of the petitioner and no opportunity was afforded to him. He admitted that a daily wage is regularized as per the seniority list. Volunteered that, only that worker is regularized, who fulfills the criteria for regularization.

13. Ex. RW1/B is the mandays chart relating to the petitioner.

14. The version of the petitioner is that his services were engaged as a daily rated Class-IV employee by the respondent in the year 1991 and that he had worked as such upto the year 1993. The respondent took the stand that the petitioner had only been engaged as a casual worker *w.e.f.* 26-2-1991 for carrying out the works of casual nature and that he had worked as such upto 13-2-1993. The petitioner denied in his cross-examination that he had worked with the respondent as a seasonal worker. The respondent has not placed on the file any document evidencing that the petitioner was employed for seasonal works subject to the availability of work.

15. A plea was also taken by the respondent that the petitioner was an intermittent worker. He had left the job of his own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand*** reported in **[2019 (160) FLR 16]**, it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the

respondent calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Thus, the plea of abandonment put forth by the respondent/employer is not established.

16. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of 12 calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. As per the mandays chart Ex. RW1/B, the petitioner had only worked for 28 days in the year 1991, 104 days in the year 1992 and 19 days in the year 1993. Thus, in his total service for a period of about two years in between February, 1991 to February, 1993, he had only worked for 151 days. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

17. It is claimed by the petitioner that at the time of the termination of his services, persons junior to him were retained in service by the respondent. Significantly, the petitioner has not disclosed the names of such juniors either in the pleadings or the ocular evidence led on record by him. No seniority list has been placed and exhibited on record or any other witness examined so as to show that persons junior to the petitioner were retained by the respondent at the time of the termination of his services. No prayer had ever been made by the petitioner for the production of the seniority list from the respondent during the pendency of this case. That being so, the provisions of Section 25-G of the Act are also not attracted in this case.

18. It was also claimed by the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. Except for his self serving and oral testimony, there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

19. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3:

20. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondent and against the petitioner.

Issues no. 4 to 6:

21. Not pressed.

Relief:

22. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 583/2016
Date of Institution : 24-8-2016
Date of Decision : 02-03-2019

Shri Sis Ram s/o Shri Dhani Ram, r/o Village Machrol, P.O. Balindi, Tehsil Karsog, District Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, I&PH Division, Karsog, District Mandi, H.P. *..Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.C. Pandit, Adv.
For the Respondent : Sh. Tarsem Kumar, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication: —

“Whether alleged termination of services of Shri Sis Ram s/o Shri Dhani Ram, r/o Village Machrol, P.O. Balindi, Tehsil Karsog, District Mandi, H.P. *w.e.f.* 01-06-1993 by the Executive Engineer, I&P.H. Division Karsog, District Mandi, H.P., who had worked as daily wages beldar only for 62 days in year, 1992-93 and has raised his industrial dispute after more than 19 years *vide* demand notice dated 25-4-2013, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period of 62 days only during year, 1992-93 and delay of more than 19 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was initially appointed as a daily waged beldar in the year 1988 and had worked as such upto December, 1993. However, thereafter his services were verbally terminated by the respondent without any reason and without serving a prior notice upon him, as required under the provisions of the Industrial Disputes Act, 1947 and the rules framed there under in the year 1974. It was asserted that after appointment of the claimant/petitioner, he had worked with the respondent at various places, and had continued to work upto December, 1993. It is alleged that while terminating the services of the petitioner, the respondent had engaged many fresh hands. The respondent had

violated provisions of Sections 25-G and 25-H of the Industrial Disputes Act, (hereinafter referred to 'the Act' for short) as well as Rules 81, 82 and 83 of the Industrial Disputes Rules. The respondent had unlawfully terminated the services of the petitioner. He had been retrenched without giving notice of retrenchment and compensation in lieu thereof. At the time of his termination persons junior to him were retained in service by the respondent. The names of the juniors who were retained in service by the respondent are S/Shri Nimat Ram, Hima Ram, Manohar Lal, Khub Chand, Karmiya and Lachhi Ram. He had completed more than 240 days in 12 calendar months from the date of his illegal termination. The respondent had not followed the provisions of Section 25-F (a) and (b) of the Act. The petitioner had made several requests for his re-employment. He was assured by the respondent that as and when his services would be required, he would be called. However, he was never called again. Rather, juniors to the petitioner were retained and fresh hands were engaged. No notice was given to the petitioner as provided under the rules. While terminating him, the respondent had grossly violated the settled principles of law. Conciliation proceedings had failed due to the unreasonable attitude of the respondent, so the appropriate government had referred the dispute to this Court for adjudication.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case: —

“that directions may kindly be issued to the respondents to re-instate the claimant in service along-with all consequential benefits/relief(s) of back wages, seniority, continuity and regularization of services, besides the cost of the petition”.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken.

On merits, it was denied that the petitioner was appointed as a beldar from the year 1988 upto the year 1993. It was asserted that the petitioner was engaged as a beldar on daily waged basis *w.e.f.* 1-9-1992 and who worked intermittently upto May, 1993. He thereafter had left the job of his own sweet will. It was specifically denied that the services of the petitioner had verbally been terminated by the respondent. It was asserted that the petitioner had never completed 240 days in any calendar year and for continuous service, the petitioner had not fulfilled the conditions as provided under Section 25-B of the Act. There was no violation of the provisions of Section 25-F of the Act. Since, the petitioner had left the work of his own sweet will, it was not required to serve a notice upon him as provided under Section 25-F of the Act. Only those workers had been regularized by the respondent, who had fulfilled the criteria of regularization as per government policy. The petitioner is gainfully employed as an agriculturist.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 04-1-2018: —

- (1) Whether termination of the services of the petitioner by the respondent *w.e.f.* 01-06-1993 is/was improper and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*

- (3) Whether the petition is not maintainable in the present form as alleged? ..OPR.
- (4) Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? ..OPR.

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Sis Ram appeared as PW2 and he examined Shri Suresh Kumar as PW1. The respondent examined one Shri Sandeep Chaudhary, who tendered his statement by way of affidavit Ex. RW1/A and copy of mandays chart Ex. RW1/B.

7. Arguments of the learned counsel for the petitioner and Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: Yes
Issue No.2	: Discussed
Issue No.3	: No
Issue No.4	: No
Relief.	: Petition is partly allowed awarding lump sum compensation of `15,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Sis Ram (petitioner) stepped into the witness box as PW2. In his affidavit Ex.PW2/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he was kept at work in the year 1992-93, date he does not remember. He admitted that he had worked with the department from September, 1992 upto October, 1992 and from March, 1993 upto May, 1993. He denied that thereafter he had left the work. Volunteered that, he was removed from the work. He admitted that he had never worked for more than 240 days. Self stated that, he was never given such opportunity to work. He admitted that he had given the demand notice in the year 2013. He owns four-five bighas of land, which is cultivated by him. He admitted that from the year 1993 upto April, 2013 he had not made any representation for being kept at work. He denied that the department had not engaged juniors to him. S/Sh. Hima Ram, Manohar Lal, Khub Chand and Karmya, whose names have been mentioned in para 7 of the affidavit, had been kept at work with him. He was categorical that the department had only regularized those persons, who had fulfilled all the conditions for regularization.

11. The petitioner also examined one Shri Suresh Kumar as PW1. He stated in his chief examination that as per the record Sh. Nimmat Ram was regularized on 1-1-2002 and S/Sh. Manohar Lal, Khub Chand, Karam Singh and Lachhi Ram on 1-1-2003 respectively.

In the cross-examination, he admitted that all the above named persons had been kept as per the orders of the Court. He was categorical that as per muster rolls, they all had been kept at work in the year 1992.

12. Conversely, Shri Sandeep Chaudhary, Executive Engineer, I&PH Division, Karsog (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he stated that he was posted as Executive Engineer, I&PH Division, Karsog since October, 2018 and he is well conversant with the case. He denied that the petitioner had worked in their Division from the year 1992 upto the year 1993 regularly. Volunteered that, he had worked intermittently. He denied that thereafter they had not allowed the petitioner to work. He admitted that no notice had been served upon the petitioner terminating his services. He specifically denied that after terminating the petitioner other workers had been kept at work. Self stated that, they had never terminated the petitioner but had left the job of his own. He feigned ignorance that the persons, namely, S/Sh. Nimat Ram, Manohar Lal, Khub Chand, Karam Singh and Lachmi Ram were appointed by the department and their services have been regularized.

13. Ex. RW1/B is the mandays chart relating to the petitioner.

14. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the year 1988 and that he had worked as such till December, 1993. The respondent took the stand that the petitioner had been engaged as a daily waged beldar on 1-9-1992 and that he worked intermittently upto May, 1993. The petitioner admitted this case of the respondent, as he while under cross-examination was categorical that he had worked with the department from September, 1992 upto May, 1993. Then, the respondent has placed and proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of September, 1992 for the first time as daily waged beldar and he had worked as such upto May, 1993. The claimant/petitioner has not placed and exhibited on record any document to show that he had worked with the respondent upto December, 1993.

15. As per the mandays chart Ex. RW1/B, the petitioner had worked for 62 days from September, 1992 upto May, 1993. Thus, in his total service for a period of nine months in between September, 1992 to May, 1993, he had only worked for 62 days. Be it recorded here that the petitioner had not worked for more than 240 days preceding 12 calendar months from the date of his termination, which is claimed to have taken place by the petitioner as per petition/statement of claim in December, 1993. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to the alleged illegal termination. It is established on record that the petitioner had not worked for 240 days preceding 12 calendar months from the date of his termination. It is evident from the mandays chart that from September, 1992 till May, 1993 the petitioner had only worked for 62 days, therefore, immediately in the preceding 12 calendar months from the month of termination, petitioner had not worked for 240 days, so as to meet the requirement of law of having a continuous service of one year. Thus, it was not required of the respondent to have issued a notice as provided under Section 25-F of the Act. So, it can safely be held that the respondent had not violated the provisions of Section 25-F of the Act, as claimed by the petitioner.

16. A plea was taken by the respondent that the petitioner was an intermittent worker. He had left the job of his own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand*** reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Thus, the plea of abandonment put forth by the respondent/employer is not established.

17. It is the case of the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondent and their services stand regularized. It appears from the substantive evidence of PW1 Shri Suresh Kumar, who is working as a Senior Assistant in the office of the respondent, that persons, namely, S/Sh. Nimat Ram, Manohar Lal, Khub Chand, Karam Singh and Lachhi Ram have been regularized by the department. It was suggested to this witness by the respondent that all these workers were kept at work on muster roll basis in the year 1992. He admitted the suggestion. Putting of this suggestion by the respondent and its admission by the own employee of the respondent, leaves no doubt in mind that the afore-named workers were initially appointed as daily waged beldars in the year 1992. Admittedly, the petitioner was engaged as a daily waged beldar by the respondent in the month of September, 1992. No grain of evidence has been led on record by the respondent to show that the above named workers were senior to the petitioner. No seniority list has been placed and proved on record by the respondent suggestive of the fact that the persons named by the petitioner were not junior to him, but infact they were his seniors. It has been laid down by the Hon'ble Supreme Court in case titled as ***Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union, AIR 2015 SC 1373*** that the employer is mandatorily required to circulate the seniority list as prepared. There is not an *iota* of evidence on record tenuously suggesting that the respondent had ever provided any seniority list of daily waged beldars. Since, the respondent has failed to prove on record any seniority list by way of which it could be said that the persons named by the petitioner were not juniors to him, and who admittedly were retained in service by the respondent and subsequently regularized, the claim of the petitioner that he was senior to them has to be accepted as correct on the balance of probability. Therefore, it can be said that the respondent had violated the provisions of Section 25-G of the Act, as at the time termination of the services of the petitioner, persons junior to him were retained and regularized in service by the respondent.

18. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are not attracted in this case. That apart and more importantly, the petitioner was not entitled to invoke the provisions of Section 25-H of the Act and seek re-employment by citing the case of other employees, who were already in employment and whose services were regularized by the respondent on the basis of their service records in terms of the rules. To my mind, the regularization of the employees already in service does not give any right to the retrenched employee so as to enable him to invoke Section 25-H of the Act for claiming re-employment in the services. The reason is that by such act the employer does not offer any fresh employment to any person to fill any vacancy in their set up, but they simply regularize the services of any employee already in a service. Such an act does not amount to filling any vacancy. The expression 'employment' signifies a fresh employment to fill the vacancies, whereas the expression 'regularization of the service' signifies that the employee, who is already in service, his services are regularized as per service regulations.

19. Such being the situation, I have no hesitation to conclude that the respondent has only contravened the provisions of Section 25-G of the Act.

20. While testifying in the Court as PW2, the petitioner has given his age as 45 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he owns landed property and cultivates the same. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

21. The learned Assistant District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. vs. Dilu Ram*** (CWP No. 95/2000 decided on 26-8-2004) wherein it was *inter alia* held:—

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh Vs. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC).”

22. In ***Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160***, delay of more than 10 years was condoned by our own Hon'ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon'ble Supreme Court in ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82*** that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

23. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Chamba appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh *vide* his report under Section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, *vide* Notification No.11-23/84(Lab)ID/2016/Mandi, dated 15th July, 2016. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned Assistant District Attorney merits rejection and is rejected.

24. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh*** reported in ***2013 (136) FLR 893 (SC)***, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the

workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about four months and had actually worked for 62 days as per mandays chart on record and that the services of the petitioner were disengaged in June, 1993, who had worked as a non- skilled worker and had raised the industrial dispute by issuance of demand notice after about **nineteen years** i.e. demand notice was given on 25-4-2013. It is also pertinent to mention here that the petitioner on the date of filing the claim petition, was aged 45 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in Geetam Singh's and Kuberbhai's cases (*supra*), the petitioner is not entitled for reinstatement or for back wages, but only for lump-sum compensation.

25. In view of the discussion and findings arrived at by me above, a lump-sum compensation of `15,000/- (Rupees fifteen thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue No.4 is answered in the negative and against the respondent.

Issue No. 3:

26. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief:

27. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of `15,000/- (Rupees fifteen thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 580/2016
Date of Institution : 24-8-2016
Date of Decision : 02-03-2019

Shri Dharam Singh s/o Shri Paras Ram, r/o Village Rakdi, P.O. Balindi, Tehsil Karsog, District Mandi, H.P. ..Petitioner.

Versus

The Executive Engineer, I&PH Division, Karsog, District Mandi, H.P. ..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.C. Pandit, Adv.
For the Respondent : Sh. Tarsem Kumar, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Dharam Singh s/o Shri Paras Ram, r/o Village Rakdi, P.O. Balindi, Tehsil Karsog, District Mandi, H.P. w.e.f. 01-01-1993 by the Executive Engineer, I.&P.H. Division, Karsog, District Mandi, H.P., who had worked as daily wages beldar only for 25 days in year, 1992 and has raised his industrial dispute after more than 20 years vide demand notice dated 25-4-2013, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period of 25 days only in year, 1992 and delay of more than 20 years raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was initially appointed as a daily waged beldar in the year 1992 and had worked as such upto December, 1993. However, thereafter his services were verbally terminated by the respondent without any reason and without serving a prior notice upon him, as required under the provisions of the Industrial Disputes Act, 1947 and the rules framed there under in the year 1974. It was asserted that after appointment of the claimant/petitioner, he had worked with the respondent

at various places, and had continued to work upto December, 1998. It is alleged that while terminating the services of the petitioner, the respondent had engaged many fresh hands. The respondent had violated provisions of Sections 25-G and 25-H of the Industrial Disputes Act, (hereinafter referred to 'the Act' for short) as well as Rules 81, 82 and 83 of the Industrial Disputes Rules. The respondent had unlawfully terminated the services of the petitioner. He had been retrenched without giving notice of retrenchment and compensation in lieu thereof. At the time of his termination persons junior to him were retained in service by the respondent. The names of the juniors who were retained in service by the respondent are S/Shri Nimat Ram, Hima Ram, Manohar Lal, Khub Chand, Karmiya and Lachhi Ram. He had completed more than 240 days in 12 calendar months from the date of his illegal termination. The respondent had not followed the provisions of Section 25-F (a) and (b) of the Act. The petitioner had made several requests for his re-employment. He was assured by the respondent that as and when his services would be required, he would be called. However, he was never called again. Rather, juniors to the petitioner were retained and fresh hands were engaged. No notice was given to the petitioner as provided under the rules. While terminating him, the respondent had grossly violated the settled principles of law. Conciliation proceedings had failed due to the unreasonable attitude of the respondent, so the appropriate government had referred the dispute to this Court for adjudication.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“that directions may kindly be issued to the respondents to re-instate the claimant in service along-with all consequential benefits/relief(s) of back wages, seniority, continuity and regularization of services, besides the cost of the petition”.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches have been taken.

On merits, it was denied that the petitioner was appointed as a beldar from the year 1988 upto the year 1992. It was asserted that the petitioner was engaged as a beldar on daily waged basis *w.e.f.* 1-12-1992 and who worked intermittently upto December, 1992. He thereafter had left the job of his own sweet will. It was specifically denied that the services of the petitioner had verbally been terminated by the respondent. It was asserted that the petitioner had never completed 240 days in any calendar year and for continuous service, the petitioner had not fulfilled the conditions as provided under Section 25-B of the Act. There was no violation of the provisions of Section 25-F of the Act. Since, the petitioner had left the work of his own sweet will, it was not required to serve a notice upon him as provided under Section 25-F of the Act. Only those workers had been regularized by the respondent, who had fulfilled the criteria of regularization as per government policy. The petitioner is gainfully employed as an agriculturist.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 04-1-2018:—

- (1) Whether termination of the services of the petitioner by the respondent *w.e.f.* 01-01-1993 is/was improper and unjustified as alleged? ..*OPP.*
- (2) If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? ..*OPR.*

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Dharam Singh appeared as PW2 and he examined Shri Suresh Kumar as PW1. The respondent examined one Shri Sandeep Chaudhary, who tendered his statement by way of affidavit Ex. RW1/A and copy of mandays chart Ex. RW1/B.

7. Arguments of the learned counsel for the petitioner and Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: No
Relief.	: Petition is partly allowed awarding lumpsum compensation of `10,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Dharam Singh (petitioner) stepped into the witness box as PW2. In his affidavit Ex.PW2/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he was kept at work in the year 1992-93, date he does not remember. He admitted that he had worked with the department upto December, 1992. He denied that thereafter he had left the work. Volunteered that, he was removed from the work. He admitted that he had never worked with the department in the year 1993. He admitted that he had never worked for more than 240 days. Self stated that, he was never given such opportunity to work. He admitted that he had given the demand notice in the year 2013. He owns four-five bighas of land, which is cultivated by him. He admitted that from the year 1993 upto April, 2013 he had not made any representation for being kept at work. He denied that the department had not engaged juniors to him. S/Sh. Hima Ram, Manohar Lal, Khub Chand and Karmya, whose names have been mentioned in para 7 of the affidavit, had been kept at work with

him. He was categorical that the department had only regularized those persons, who had fulfilled all the conditions for regularization.

11. The petitioner also examined one Shri Suresh Kumar as PW1. He stated in his chief examination that as per the record Sh. Nimmat Ram was regularized on 1-1-2002 and S/Sh. Manohar Lal, Khub Chand, Karam Singh and Lachhi Ram on 1-1-2003 respectively.

In the cross-examination, he admitted that all the above named persons had been kept as per the orders of the Court. He was categorical that as per muster rolls, they all had been kept at work in the year 1992.

12. Conversely, Shri Sandeep Chaudhary, Executive Engineer, I&PH Division, Karsog (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he stated that he was posted as Executive Engineer, I&PH Division, Karsog since October, 2018 and he is well conversant with the case. He denied that the petitioner had worked in their Division from the year 1992 upto the year 1993 regularly. Volunteered that, he had worked intermittently. He denied that thereafter they had not allowed the petitioner to work. He admitted that no notice had been served upon the petitioner terminating his services. He specifically denied that after terminating the petitioner other workers had been kept at work. Self stated that, they had never terminated the petitioner but had left the job of his own. He feigned ignorance that the persons, namely, S/Sh. Nimat Ram, Manohar Lal, Khub Chand, Karam Singh and Lachmi Ram were appointed by the department and their services have been regularized.

13. Ex. RW1/B is the mandays chart relating to the petitioner.

14. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the year 1992 and that he had worked as such till December, 1993. The respondent took the stand that the petitioner had been engaged as a daily waged beldar on 1-12-1992 and that he worked intermittently upto December, 1992. The petitioner admitted this case of the respondent, as he while under cross-examination was categorical that he had worked with the department from the year 1992 upto December, 1992. Then, the respondent has placed and proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent *w.e.f.* 1-12-1992 for the first time as daily waged beldar and he had worked as such upto 31st December, 1992. The claimant/petitioner has not placed and exhibited on record any document to show that he had worked with the respondent upto December, 1993. On the contrary, he while under cross-examination was categorical that he had never worked with the department in the year 1993.

15. As per the mandays chart Ex. RW1/B, the petitioner had worked for 25 days in the year 1992. Thus, in his total service for a period of one month, he had only worked for 25 days. Be it recorded here that the petitioner had not worked for more than 240 days preceding 12 calendar months from the date of his termination, which is claimed to have taken place by the petitioner as per petition/statement of claim in December, 1993. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to the alleged illegal termination. It is established on record that the petitioner had not worked for 240 days preceding 12 calendar months from the date of his termination. It is evident from the mandays chart that from 1st December, 1992 till 31st December, 1992 the petitioner had only worked for 25 days, therefore, immediately in the preceding 12 calendar

months from the month of termination, petitioner had not worked for 240 days, so as to meet the requirement of law of having a continuous service of one year. Thus, it was not required of the respondent to have issued a notice as provided under Section 25-F of the Act. So, it can safely be held that the respondent had not violated the provisions of Section 25-F of the Act, as claimed by the petitioner.

16. A plea was taken by the respondent that the petitioner was an intermittent worker. He had left the job of his own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand*** reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Thus, the plea of abandonment put forth by the respondent/employer is not established.

17. It is the case of the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondent and their services stand regularized. It appears from the substantive evidence of PW1 Shri Suresh Kumar, who is working as a Senior Assistant in the office of the respondent, that persons, namely, S/Sh. Nimat Ram, Manohar Lal, Khub Chand, Karam Singh and Lachhi Ram have been regularized by the department. It was suggested to this witness by the respondent that all these workers were kept at work on muster roll basis in the year 1992. He admitted the suggestion. Putting of this suggestion by the respondent and its admission by the own employee of the respondent, leaves no doubt in mind that the afore-named workers were initially appointed as daily waged beldars in the year 1992. Admittedly, the petitioner was engaged as a daily waged beldar by the respondent in the month of December, 1992. No grain of evidence has been led on record by the respondent to show that the above named workers were senior to the petitioner. No seniority list has been placed and proved on record by the respondent suggestive of the fact that the persons named by the petitioner were not junior to him, but infact they were his seniors. It has been laid down by the Hon'ble Supreme Court in case titled as ***Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union, AIR 2015 SC 1373*** that the employer is mandatorily required to circulate the seniority list as prepared. There is not an iota of evidence on record tenuously suggesting that the respondent had ever provided any seniority list of daily waged beldars. Since, the respondent has failed to prove on record any seniority list by way of which it could be said that the persons named by the petitioner were not juniors to him, and who admittedly were retained in service by the respondent and subsequently regularized, the claim of the petitioner that he was senior to them has to be accepted as correct on the balance of probability. Therefore, it can be said that the respondent had violated the provisions of Section 25-G of the Act, as at the time termination of the services of the petitioner, persons junior to him were retained and regularized in service by the respondent.

18. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are not attracted in this case. That apart and more importantly, the petitioner was not entitled to invoke the provisions of Section 25-H of the Act and seek re-employment by citing the case of other employees, who were already in employment and whose services were regularized by the respondent on the basis of their service records in terms of the rules. To my mind, the regularization of the employees already in service does not give any right to the retrenched employee so as to enable him to invoke Section 25-H of the Act for claiming re-employment in

the services. The reason is that by such act the employer does not offer any fresh employment to any person to fill any vacancy in their set up, but they simply regularize the services of any employee already in a service. Such an act does not amount to filling any vacancy. The expression 'employment' signifies a fresh employment to fill the vacancies, whereas the expression 'regularization of the service' signifies that the employee, who is already in service, his services are regularized as per service regulations.

19. Such being the situation, I have no hesitation to conclude that the respondent has only contravened the provisions of Section 25-G of the Act.

20. While testifying in the Court as PW2, the petitioner has given his age as 41 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he owns landed property and cultivates the same. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

21. The learned Assistant District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. vs. Dilu Ram*** (CWP No. 95/2000 decided on 26-8-2004) wherein it was *inter alia* held:—

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh v. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC)....”

22. In ***Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160***, delay of more than 10 years was condoned by our own Hon'ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon'ble Supreme Court in ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82*** that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

23. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Chamba appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh vide his report under Section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)ID/2016/Mandi, dated 21st July, 2016. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned Assistant District Attorney merits rejection and is rejected.

24. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh*** reported in ***2013 (136) FLR 893 (SC)***, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as ***Deputy Executive Engineer vs. Kuberbhai Kanjibhai*** 2019 (160) FLR 651, by relying upon the cases of ***Bharat Sanchar Nigam Limited vs. Bhurumal*** (2014) 7 SCC 177 and ***District Development Officer & another vs. Satish Kantilal Amerelia*** 2018 (156) FLR 266 (SC), it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about one month and had actually worked for 25 days as per mandays chart on record and that the services of the petitioner were disengaged in January, 1993, who had worked as a non- skilled worker and had raised the industrial dispute by issuance of demand notice after about ***twenty years*** i.e. demand notice was given on 25-4-2013. It is also pertinent to mention here that the petitioner on the date of filing the claim petition, was aged 41 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in Geetam Singh's and Kuberbhai's cases (*supra*), the petitioner is not entitled for reinstatement or for back wages, but only for lump sum compensation.

25. In view of the discussion and findings arrived at by me above, a lump-sum compensation of `10,000/- (Rupees ten thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue No. 4 is answered in the negative and against the respondent.

Issue No. 3:

26. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief:

27. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of `10,000/- (Rupees ten thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the

petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 126/2017
Date of Institution : 21-6-2017
Date of Decision : 19-03-2019

Shri Vijender Kumar s/o Shri Ram Palat, r/o V.P.O. Vivek Nagar, Malahat, District Una, H.P. *..Petitioner.*

Versus

The General Manager, M/s Industrial Engineering Corporation, 51-B, Industrial Area Mehatpur, Tehsil and District Una, H.P. *..Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Sh. Nikhil Shukla, Adv.

AWARD/ORDER

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Vijender Kumar s/o Shri Ram Palat, r/o V.P.O. Vivek Nagar, Malahat, District Una, H.P.. *w.e.f.* 24-06-2015 and by the General Manager, M/s Industrial Engineering Corporation, 51-B, Industrial Area, Mehatpur, Tehsil & District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The case is listed for the appearance of the petitioner for today but, however, Shri Jatinder Bali, General Manger, M/s Industrial Engineering Corporation, 51-B, Industrial Area

Mehatpur, District Una for the respondent has made the below given statement in the Court today:—

“ब्यान किया कि हम वादी को नौकरी पर दोबारा रखने के लिये तैयार हैं। वादी को बिना back wages के पिछली वरिष्ठता प्रदान कर दी जायेगी। वादी 01-04-2019 से काम पर आ सकता है”।

3. The petitioner himself has also made the below given statement in the Court today:-

“ब्यान किया कि मुझे प्रतिवादी पिछली वरिष्ठता के साथ बिना back wages नौकरी पर रखने को तैयार है। जिसमे मुझे कोई आपत्ति न है। अतः मैं प्रतिवादी के पास 01-04-2019 से नौकरी करने को तैयार हूँ”।

4. In view of the above statement made by both the parties, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is hereby directed to re-engage the petitioner as per statement made by the parties on 19-3-2019. He shall be entitled to seniority in service from the date/month of his illegal termination *i.e.* 24-6-2015 *except back wages*. Parties to bear their own costs.

5. The reference is answered in the aforesaid terms.

6. A copy of this Order/Award be sent to the appropriate government for further necessary action at its end.

7. File after due completion be consigned to the records.

Announced in the open Court today this 19th day of March, 2019

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 127/2017
Date of Institution : 21-6-2017
Date of Decision : 19-03-2019

Shri Jarnail Singh s/o Shri Kishan Singh, r/o V.P.O. Bangarh, District Una, H.P. *.Petitioner.*

Versus

The General Manager, M/s Industrial Engineering Corporation, 51-B, Industrial Area Mehatpur, Tehsil and District Una, H.P. *..Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Sh. Nikhil Shukla, Adv.

AWARD/ORDER

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Jarnail Singh s/o Shri Kishan Singh, r/o V.P.O. Bangarh, District Una, H.P. *w.e.f.* 24-06-2015 by the General Manager, M/s Industrial Engineering Corporation, 51-B, Industrial Area Mehatpur, Tehsil & District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The case is listed for the appearance of the petitioner for today but, however, Shri Jatinder Bali, General Manager, M/s Industrial Engineering Corporation, 51-B, Industrial Area Mehatpur, District Una for the respondent has made the below given statement in the Court today:—

“ब्यान किया कि हम वादी को नौकरी पर दोबारा रखने के लिये तैयार हैं । वादी को बिना back wages के पिछली वरिष्ठता प्रदान कर दी जायेगी। वादी 01-04-2019 से काम पर आ सकता है”।

3. The petitioner himself has also made the below given statement in the Court today:—

“ब्यान किया कि मुझे प्रतिवादी पिछली वरिष्ठता के साथ बिना back wages नौकरी पर रखने को तैयार है। जिसमे मुझे कोई आपत्ति न है। अतः मैं प्रतिवादी के पास 01-04-2019 से नौकरी करने को तैयार हूँ”।

4. In view of the above statement made by both the parties, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is hereby directed to re-engage the petitioner as per statement made by the parties on 19-3-2019. He shall be entitled to seniority in service from the date/month of his illegal termination *i.e.* 24-6-2015 *except back wages*. Parties to bear their own costs.

5. The reference is answered in the aforesaid terms.

6. A copy of this Order/Award be sent to the appropriate government for further necessary action at its end.

7. File after due completion be consigned to the records.

Announced in the open Court today this 19th day of March, 2019

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 481/2016
Date of Institution : 22-8-2016
Date of Decision : 23-03-2019

Shri Madan Lal s/o Shri Ishwar Dass, r/o V.P.O. Kandi, Tehsil Palampur, District Kangra,
H.P. ..Petitioner.

Versus

The Divisional Forest Officer, Palampur Forest Division, Palampur, District Kangra, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Madan Thakur, Adv.
For the Respondent : Sh. Shikha Rana, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of the services of Shri Madan Lal s/o Ishwar Dass, r/o V.P.O. Kandi, Tehsil Palampur, District Kangra H.P. during January, 2004 by and the Divisional Forest Officer, Palampur Forest Division, Palampur, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by workman, is legal and justified; whereas he has raised the industrial dispute *vide* demand notice dated 10-10-2012 after lapse of more than 8 years. If not, keeping in view of working period of 126, 30, 79 and 30 days during years 2001, 2002, 2003 and 2004 respectively and delay of more than 8 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged as daily waged worker at Saurabh Van Vihar, Palampur by the respondent *w.e.f.* 1-1-1999 and he had worked there upto December, 2000. Thereafter, he was shifted to the field and had worked as Chowkidar with Range Forest Officer, Palampur in the Rest House for a period of two years and after that the respondent had been made to work under the Assistant Conservator of Forest. It was asserted that the petitioner was also made to work at Card Board Factory, Baijnath, but his wages were paid by the respondent. The petitioner had served the respondent continuously, sincerely and faithfully, who had completed more than 240 days during his service with the respondent in each calendar year, but the respondent had terminated his services on 1-1-2004 without any prior notice, which clearly violated the provisions of the Industrial Disputes Act, 1947, (hereinafter referred to ‘the Act’ for short). After the oral termination of the petitioner, he had approached the respondent, but without success. Since the date of termination of his services, neither he was gainfully employed in any government/semi-government/private institution nor he is doing any business. At the time of his termination, persons junior to him were retained in service by the respondent. The respondent has violated the principle of ‘last come first go’. The names of the juniors, who were retained in service and whose services have been regularized by the respondent are S/Shri Bhushan Kumar, Subhash

Chand and Sanjay Kumar. Fresh hands were also appointed after the termination of the services of the petitioner. No retrenchment compensation has been paid to him. So, it was claimed that the respondent has violated the provisions of Section 25-F, 25-G and 25-H of the Act. It is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case: “the termination of the services of the petitioner *w.e.f.* 1-1-2004 be quashed and set aside and the respondent be directed to reengage him in service in the same capacity alongwith all consequential benefits *i.e.* continuity/seniority, regularization and back wages/arrears of pay with interest @12% per annum and any other relief as deemed fit”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition is bad on the ground of delay and laches have been taken.

On merits, it was denied that the petitioner was engaged as a daily wage worker in Saurabh Van Vihar Palampur by the respondent on 1-1-1999 and that he had worked upto December, 2000. It is asserted that the services of the petitioner were engaged in January, 2001 as a daily waged labour and he had worked intermittently upto January, 2004. Thereafter he had left the work of his own sweet will. It is denied that the petitioner was made to work in the Card Board Factory at Baijnath and that the wages were paid to him by the respondent. It is stated that the petitioner had not completed 240 days in any calendar year. It is denied that the respondent had given fictional breaks to him. It is asserted that he had worked for 30 days in January, 2004, so the question of termination of his services on 1-1-2004 does not arise. It is claimed that as S/Shri Bhusan Kumar, Subhash Chand and Sanjay Kumar were engaged by the respondent in year 1998, so there was no violation of the provisions of Sections 25-G and 25-H of the Act. The petitioner had raised the demand notice after lapse of about 8 years on 10-10-2012, without there being any explanation to it.

In these circumstances, the respondent prayed that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 8-5-2018:—

- (1) Whether termination of the services of the petitioner by the respondent during January, 2004 is/was improper and unjustified as alleged? ..*OPP.*
- (2) If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Madan Lal appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A and copy of demand notice Mark-A. The respondent examined one Shri B.S. Yadav as RW1, who tendered his statement by way of

affidavit as Ex. RW1/A, copy of mandays chart of the petitioner as Ex. RW1/B and copy of seniority list as Ex. RW1/C.

7. Arguments of the learned counsel for the petitioner and learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Yes
Issue No. 4	: Not pressed
Relief.	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Madan Lal (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he had not been engaged on work in the year 1999. He denied that he was kept at work as a daily wager in January, 2001. He also denied that he had worked intermittently from January, 2001 to January, 2004. He further denied that after January, 2004, he had left the work of his on accord. He also denied that he had never worked in the Card Board Factory at Baijnath. He was categorical that the Card Board Factory at Baijnath is not under the control of the forest department. He feigned ignorance that he had not completed 240 days work in any calendar year. He denied that neither any breaks had been given, nor he had been removed from the work by the department. He owns two bighas land, which he cultivates. He also works as a private labourer. He denied that Shri Subhash Chand and Shri Sanjay were senior to him. He admitted that he had raised the demand notice in October, 2012. He also admitted that prior to it he had never moved any application for being kept at work.

11. Mark-A is the demand notice of the petitioner.

12. Conversely, Shri B.S. Yadav, Divisional Forest Officer, Palampur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the petitioner was kept as a daily wager by the department on 1-1-1999. Volunteered that, he was engaged in January, 2001. He specifically denied that for about two years the petitioner had worked as Chowkidar in the Rest House at Palampur. He also denied that the petitioner had also worked under ACF, Palampur. It was also denied that the petitioner was also made to work in the Card Board Factory at Baijnath and that

the wages were paid to him by the respondent. He further denied that the petitioner had worked for 240 days in a year. It was also denied that fictional breaks were intentionally given to the petitioner by the department, so that he could not complete 240 days in a year. He denied that the services of the petitioner were terminated in January, 2004. Self stated that he had left the work of his own. He admitted that as per the record, no notice had been given to the petitioner to resume the work. He denied that the petitioner had approached the respondent time and again for his re-engagement, but without success. He denied that the respondent has violated the principle of 'last come first go', as juniors were retained in service. He also denied that after January, 2004 new hands have been engaged by the respondent. He denied that the services of the petitioner had been terminated in violation of the provisions of law.

13. Ex. RW1/B is the mandays chart relating to the petitioner.

14. Ex. RW1/C is the copy of list of daily waged workers who had completed 8 years of continuous service as on 31-12-2006.

15. The version of the petitioner is that his services were engaged as a daily waged worker by the respondent on 1-1-1999 and that he had worked as such upto January, 2004. The respondent has pleaded that the petitioner was appointed as a daily waged worker in January, 2001 and that he had worked as such intermittently upto January, 2004. Although, the petitioner (PW1) in his cross-examination denied the fact that he had been engaged in the month of January, 2001 by the respondent and that he had worked upto January, 2004, but the respondent has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month January, 2001 for the first time as daily waged worker and that he had only worked as such upto January, 2004. The petitioner has not placed and exhibited on record any document to show that he was appointed on 1st January, 1999 by the respondent and that he had worked upto January, 2004, as claimed.

16. A plea was taken by the respondent that the petitioner had abandoned the work himself. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In *Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand* reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon him to resume the duties. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Shri B.S. Yadav (RW1) clearly admitted that no notice was ever served upon the petitioner by the department to report back on work. Thus, the plea of abandonment put forth by the respondent/employer is not established.

17. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of 12 calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. As per the copy of mandays chart Ex. RW1/B, the petitioner had only worked for a total of 265 days from January, 2001 upto January, 2004. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

18. Although, it was claimed by the petitioner that fictional breaks were intentionally given to him by the respondent so that he could not complete 240 days in a calendar year, and

which fact is refuted by the respondent, but as there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination.

19. In his pleadings and the ocular evidence, the petitioner claimed that persons junior to him named S/Shri Bhushan Kumar, Subhash Chand and Sanjay Kumar were retained by the respondent, when his services were terminated and that now they have been regularized by the respondent. The respondent took the stand that all the above named persons were senior to the petitioner. No doubt, the petitioner in his cross-examination denied this fact, but placed on record by the respondent is copy of list of such daily waged workers who had completed 8 years of continuous service as on 31-12-2006 as Ex. RW1/C. The names of S/Shri Sanjay Kumar and Subhash Chand are reflected in it at serial Nos. 10 and 14 respectively. In this document their dates of initial engagement in the department have been reflected as 1-7-1998 and 1-3-1998 respectively. Be it recorded here at the cost of repetition that the date of initial engagement of the petitioner with the respondent, as per the record, is January, 2001. So, both the aforementioned persons are not juniors to the petitioner, rather they are his seniors. As regards Shri Bhushan Kumar, there is nothing on record to show that he was ever engaged by the respondent and that he was junior to the petitioner. It was specifically claimed by the respondent that the services of said Shri Bhushan Kumar had never been engaged as a daily waged worker by the respondent. To this effect ocular evidence was also led on record by the respondent in the shape of testimony of Shri B.S. Yadav (RW1), who specifically deposed in his examination-in-chief, being in the shape of affidavit Ex. RW1/A, that Shri Bhushan Kumar had never been engaged by the respondent. His such testimony has not been challenged in his cross-examination. It was merely suggested to him that at the time of termination of the services of the petitioner, juniors were retained by the respondent. He denied the suggestion. It is by now well settled that denied suggestion does not amount to proof. Therefore, it can safely be held that the petitioner has failed to establish on record that persons junior to him are still serving the respondent/department. In these circumstances, the latter cannot be said to have failed to adhere to the principle of 'last come first go'. That being so, the provisions of Section 25-G of the Act are also not attracted in this case.

20. It was also claimed by the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. Except for his self serving and oral testimony, there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are also not attracted in this case. That apart and more importantly, the petitioner was not entitled to invoke the provisions of Section 25-H of the Act and seek re-employment by citing the case of other employees, who were already in employment and whose services were regularized by the respondent on the basis of their service records in terms of the rules. To my mind, the regularization of the employees already in service does not give any right to the retrenched employee so as to enable him to invoke Section 25-H of the Act for claiming re-employment in the services. The reason is that by such act the employer does not offer any fresh employment to any person to fill any vacancy in their set up, but they simply regularize the services of any employee already in service. Such an act does not amount to filling any vacancy. The expression 'employment' signifies a fresh employment to fill the vacancies, whereas the expression 'regularization of the service' signifies that the employee, who is already in service, his services are regularized as per service regulations.

21. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3:

22. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondent and against the petitioner.

Issue No. 4:

23. Not pressed.

Relief:

24. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court t his 23rd day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 525/2016
Date of Institution : 23-8-2016
Date of Decision : 23-03-2019

Shri Som Datt s/o Shri Murli Ram, r/o Village Sakrain, P.O. Tanehar, Tehsil Sarkaghat, District Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, HPPWD, Division Dharampur, District Mandi, H.P. *..Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Smt. Shikha Rana, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Som Datt, s/o Shri Murli Ram, r/o Village Sakrain, P.O. Tanehar, Tehsil Sarkaghat, District Mandi, H.P. during 10/1999 by the Executive Engineer, HPPWD Division Dharampur, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute *vide* demand notice dated 21-02-2015 after more than 16 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 107 days during years 1999 and delay of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar on muster roll basis in the month of July, 1999. He worked as such upto October, 1999 and had completed more than 240 days during his service with the respondent in each calendar year, and was thus covered under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short). It is alleged that the respondent had unlawfully terminated the services of the petitioner. It is also his case that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof, which is a clear violation of the provisions of Section 25-F of the Act. At the time of his termination, persons junior to him were retained in service by the respondent. The respondent had violated the principle of ‘first come last go’. The names of the juniors, who were retained in service by the respondent are S/Sh./Smt. Shashi Pal, Roshani Devi, Mamta Devi and Inder Singh. It is further alleged that after termination of the services of the petitioner, the respondent had appointed new/fresh hands, namely, S/Sh./Smt. Pardeep Kumar, Vipin Kumar, Lekh Raj, Subhash Chand, Sunita Devi, Kirna Devi, Sunita Devi, Ritesh Kumar, Chanchla Devi, Ramesh Kumar and Ruma Devi. He was not given an opportunity of re-employment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage his services, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is violative of Sections 25-F, 25-G and 25-H of the Act.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the illegal verbal termination order of the petitioner *w.e.f.* October, 1999 be set aside and the respondent be directed to reinstate him with full back wages, continuity in service, seniority and all other consequential service benefits. His services be also ordered to be regularized by the respondent as per policy framed by the State Government and besides that the respondent be directed to pay Rs.15,000/- to the petitioner as litigation costs and other relief(s) as deemed fit”.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition suffered from the vice of delay and laches have been taken.

On merits, it was asserted that the petitioner was engaged as a daily waged beldar in the year, 1999 and he remained engaged till the month of October, 1999. He had worked intermittently with the department and had left the job of his own sweet will. He had not

completed 240 days in each calendar year, so there was no need to serve any notice under Section 25-F of the Act. It is denied that the respondent had terminated the services of the petitioner. It was asserted that the respondent had retrenched daily waged workmen in the month of February, 2004 and July, 2005 respectively, but the petitioner had left the job of his own sweet will in the year 1999. Regarding the allegation of engagement of persons junior to the petitioner, it was claimed that Shri Shahi Kant and Smt. Roshani Devi had worked with the department continuously, while workers, namely, Smt. Mamta Devi and Sh. Inder Singh had been engaged on compassionate grounds. So, there was no violation of the provisions of Section 25-G of the Act. The petitioner had left the job of his own free will and volition. The workers mentioned in para No. 4 of the petition were engaged on compassionate grounds, so the question of giving opportunity for re-engagement to the petitioner did not arise at all. There was not violation of the provisions of Section 25-H of the Act by the respondent. The demand notice was raised by the petitioner only in the year 2014, *i.e.* after about 18 years, hence the same is bad due to delay and laches. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages.

In these circumstances, the respondent prayed that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 3-1-2018:—

- (1) Whether termination of services of the claimant/petitioner by the respondent during October, 1999 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (4) Whether the claim petition suffers from the vice of delay and laches as alleged. If so, its effect? ..*OPR.*

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Som Datt appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of mandays chart of Sh. Shashi Kant as Ex. PW1/B, copy of RTI information dated 13-11-2013 as Ex. PW1/C and copy of his mandays chart as Ex. PW1/D. The respondent examined one Shri Jai Pal Naik as RW1, who tendered his statement by way of affidavit as Ex. RW1/A and copy of mandays chart of petitioner as Ex. RW1/B.

7. Arguments of the learned Authorized Representative for the petitioner and learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1 : Yes

Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: No
Relief.	: Petition is partly allowed awarding lump sum compensation of ₹20,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Som Datt (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he had been engaged as a daily waged beldar in the month of July, 1999. He denied that he had worked intermittently with the respondent from July, 1999 upto October, 1999. He denied that no junior persons had been engaged by the department. He admitted that he had given the demand notice in the year 2009. He denied that he had left the work of his own after October, 1999. Self stated that, he was terminated. He also admitted that he had not made any representation from the month of October, 1999 upto February, 2015. Volunteered that, he had orally approached the department. He admitted that he works as a private labourer. He also admitted that he owns land and does agricultural chores.

11. Ex. PW1/B is the copy of mandays chart relating to Shri Shashi Kant.

12. Ex. PW1/C is the copy of letter dated 13-11-2013 regarding Information Under RTI Act, 2005.

13. Ex. PW1/D is the copy of mandays chart of the petitioner.

14. Conversely, Shri Jai Pal Naik, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that when the petitioner was employed by the department, no appointment letter was issued. He admitted that as per the record there is no correspondence regarding the petitioner having left the job. He also admitted that no compensation has been given to the petitioner as per record. He was feigned ignorance that the persons mentioned in para No. 4 of the statement of claim are junior to the petitioner.

15. Ex. RW1/B is the mandays chart relating to the petitioner.

16. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the month of July, 1999 and that he had worked as such till October, 1999. The respondent in his reply admitted the fact that the department had engaged the petitioner as a daily waged beldar in the year, 1999. Placed on record by the petitioner is a copy of his mandays chart as Ex. PW1/D. Although, this document was objected to by the respondent, but, however, a perusal of the copy of mandays chart relating to the petitioner placed on record by the

respondent itself as Ex. RW1/B reveals that it is same and similar to Ex. PW1/D. A perusal of these documents discloses that the services of the petitioner were engaged by the respondent in the month of July, 1999 for the first time as a daily waged beldar and he had only worked as such upto October, 1999. Therefore, in view of the above, the case of the petitioner stands duly established on record that he had been engaged as daily waged beldar on muster roll basis in July, 1999 and that he had worked as such upto October, 1999.

17. A plea was taken by the respondent that the petitioner was an intermittent worker. He had left the job of his own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In *Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand* reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Shri Jai Pal Naik (RW1) clearly admitted that as per the record there is no correspondence with the petitioner of his leaving the job. Thus, the plea of abandonment put forth by the respondent/employer is not established.

18. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of 12 calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. As per the copy of mandays chart Ex. RW1/B, the petitioner had only worked for a total of 107 days from July, 1999 upto October, 1999. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

19. Ex. PW1/B, the mandays chart of beldar, namely, Shri Shashi Kant, reveals that he was appointed in the year 2000. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner, as per the pleadings and evidence of the parties on record is July, 1999. There is nothing on record to show that Shri Shashi Kant was senior to the petitioner. Shri Jai Pal Naik (RW1), while under cross-examination merely feigned ignorance to the fact that the persons named in para No. 4 of the statement of claim were juniors to the petitioner. The aforesaid documentary evidence, which has gone unrebutted on record, clearly indicates that a person junior to the petitioner was still serving with the respondent/department, after the alleged termination of the petitioner. Therefore, the latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of engaging a person junior to the petitioner, an opportunity of re-employment was afforded to him.

20. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Section 25-G of the Act.

21. Faced with the situation, it was contended for the respondent that junior workers had been engaged and retained in service on compassionate grounds. Shri Jai Pal Naik (RW1) in his substantive evidence claimed that the workers mentioned in the para 4 of the statement of claim were engaged on compassionate grounds, as their parents had expired while in service. However, the dates of deaths of the parents of those persons have not come on the file. Admittedly, those persons are still serving with the respondent/department and their services were engaged after the engagement of the services of the petitioner. There is nothing on record to show that the deceased parents of those persons mentioned in para No. 4 of the statement of claim were senior to

the petitioner. Even if the petitioner has failed to prove on record that he had worked for more than 240 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, he was entitled for regularization of his service, but the respondent cannot be absolved from his accountability with regard to the provisions of Section 25-G of the Act, which as discussed above has been violated.

22. It was also claimed by the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. Except for his self serving and oral testimony, there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are not attracted in this case. That apart and more importantly, the petitioner was not entitled to invoke the provisions of Section 25-H of the Act and seek re-employment by citing the case of other employees, who were already in employment and whose services were regularized by the respondent on the basis of their service records in terms of the rules. To my mind, the regularization of the employees already in service does not give any right to the retrenched employee so as to enable him to invoke Section 25-H of the Act for claiming re-employment in the services. The reason is that by such act the employer does not offer any fresh employment to any person to fill any vacancy in their set up, but they simply regularize the services of any employee already in service. Such an act does not amount to filling any vacancy. The expression 'employment' signifies a fresh employment to fill the vacancies, whereas the expression 'regularization of the service' signifies that the employee, who is already in service, his services are regularized as per service regulations.

23. While testifying in the Court as PW1, the petitioner has given his age as 46 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he owns landed property and is doing agricultural chores. Besides this, it has also come in his evidence that nowadays he earns his livelihood by doing the days' drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

24. The learned Assistant District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. vs. Dilu Ram*** (CWP No. 95/2000 decided on 26-8-2004) wherein it was inter alia held:—

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh v. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC)....”

25. In ***Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160***, delay of more than 10 years was condoned by our own Hon'ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute.

Similarly, it was laid down by the Hon'ble Supreme Court in *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82 that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Joginder Nagar, District Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh *vide* his report under Section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, *vide* Notification No. 11-23/84(Lab)ID/2016-Mandi, dated 2nd July, 2016. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned Assistant District Attorney merits rejection and is rejected.

27. In case titled as *Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh* reported in 2013 (136) FLR 893 (SC), it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as *Deputy Executive Engineer vs. Kuberbhai Kanjibhai* 2019 (160) FLR 651, by relying upon the cases of *Bharat Sanchar Nigam Limited vs. Bhurumal* (2014) 7 SCC 177 and *District Development Officer & another vs. Satish Kantilal Amerelia* 2018 (156) FLR 266 (SC), it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as *State of Uttarakhand & Anr. vs. Raj Kumar*, 2019 (160) FLR 791, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about four months and that his services were disengaged in October, 1999 and who had worked as non- skilled worker and had raised the industrial dispute by issuance of demand notice after about *sixteen years* i.e. demand notice was given on 21-2-2015. It is also pertinent to mention here that the petitioner on the date of filing the claim petition was aged 46 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for lump sum compensation.

28. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹ 20,000/- (Rupees twenty thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue No. 4 is answered in the negative and against the respondent.

Issue No. 3:

29. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief:

30. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ₹ 20,000/- (Rupees twenty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No.	: 621/2016
Date of Institution	: 01-9-2016
Date of Decision	: 23-03-2019

Shri Rajesh Kumar s/o Shri Bansi Ram, r/o Village Mashdhuwan, P.O. Bradta, Tehsil Sarkaghat, District Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, HPPWD, Division Dharampur, District Mandi, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
 For the Respondent : Smt. Shikha Rana, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Rajesh Kumar s/o Shri Bansi Ram, r/o Village Mashdhuwan, P.O. Bradta, Tehsil Sarkaghat, District Mandi, H.P. during December, 1999 by the Executive Engineer H.P.P.W.D. Division, Dharampur, District Mandi, H.P., who had worked on daily wages and has raised his industrial dispute after more than 14 years *vide* demand notice dated 10-01-2014, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of more than 14 years in raising the industrial dispute what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar on muster roll basis on 9-11-1998. He had worked as such upto December, 1999 and had completed more than 240 days during his service with the respondent in each calendar year, and was thus covered under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short). It is alleged that the respondent had unlawfully terminated the services of the petitioner. It is also his case that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof, which was a clear violation of the provisions of Section 25-F of the Act. At the time of his termination, persons junior to him were retained in service by the respondent. The respondent had violated the principle of ‘first come last go’. The names of juniors, who were retained in service by the respondent are S/Sh./Smt. Shasi Pal, Roshani Devi, Mamta Devi and Inder Singh. It is further alleged that after termination of the services of the petitioner, the respondent had appointed new/fresh hands, namely, S/Sh./Smt. Pardeep Kumar, Vipin Kumar, Lekh Raj, Subhash Chand, Sunita Devi, Kirna Devi, Sunita Devi, Ritesh Kumar, Chanchla Devi, Ramesh Kumar and Ruma Devi. He was not given an opportunity of re-employment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage his services, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is violative of Sections 25-F, 25-G and 25-H of the Act.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the illegal verbal termination order of the petitioner *w.e.f.* December, 1999 be set aside and the respondent be directed to reinstate him with full back wages, continuity in service, seniority and all other consequential service benefits. His services be also ordered to be regularized by the respondent as per policy framed by the State Government and besides that the respondent be directed to pay Rs.15,000/- to the petitioner as litigation costs and other relief(s) as deemed fit”.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition suffered from the vice of delay and laches have been taken.

On merits, it was asserted that the petitioner was engaged as a daily waged beldar in the year, 1998 and he remained engaged till the month of November, 1999. He had worked intermittently with the department and had left the job of his own sweet will. He had not completed 240 days in each calendar year, so there was no need to serve any notice under Section 25-F of the Act. It is denied that the respondent had terminated the services of the petitioner. It was asserted that the respondent had retrenched daily waged workmen in the month of February, 2004 and July, 2005 respectively, but the petitioner had left the job of his own sweet will in the year 1999. Regarding the allegation of engagement of persons junior to the petitioner, it was claimed that Shri Shahi Kant and Smt. Roshani Devi had worked with the department continuously, while workers, namely, Smt. Mamta Devi and Sh. Inder Singh had been engaged on compassionate grounds. So, there was no violation of the provisions of Section 25-G of the Act. The petitioner had left the job of his own free will and volition. The workers mentioned in para No. 4 of the petition were engaged on compassionate grounds, so the question of giving opportunity for re-engagement to the petitioner did not arise at all. There was no violation of the provisions of Section 25-H of the Act by the respondent. The demand notice was raised by the petitioner only in the year 2014, *i.e.* after about 18 years, hence the same is bad due to delay and laches. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages.

In these circumstances, the respondent prayed that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 3-1-2018:—

- (1) Whether termination of services of the claimant/petitioner by the respondent during November, 1999 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (4) Whether the claim petition suffers from the vice of delay and laches as alleged. If so, its effect? ..*OPR.*

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Rajesh Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of mandays chart of Sh. Shashi Kant as Ex. PW1/B and copy of RTI information dated 13-11-2013 as Ex. PW1/C. The respondent examined one Shri Jai Pal Naik as RW1, who tendered his statement by way of affidavit as Ex. RW1/A and copy of mandays chart of petitioner as Ex. RW1/B.

7. Arguments of the learned Authorized Representative for the petitioner and learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: Yes
Issue No.2	: Discussed
Issue No.3	: No
Issue No.4	: No
Relief	: Petition is partly allowed awarding lump sum compensation of ₹ 25,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Rajesh Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he had been engaged as a daily waged beldar in the month of November, 1998. He denied that he had worked intermittently with the respondent from November, 1998 upto November, 1999. He denied that no junior persons had been engaged by the department. He admitted that he had given the demand notice in the year 2014. He denied that he had left the work of his own after November, 1999. Self stated that, he was terminated. He also admitted that he had not made any representation from the month of November, 1999 upto the year 2014. Volunteered that, he had orally approached the department. He admitted that he works as a private labourer. He also admitted that he owns land and does agricultural chores.

11. Ex. PW1/B is the copy of mandays chart relating to Shri Shashi Kant.

12. Ex. PW1/C is the copy of letter dated 13-11-2013 regarding Information Under RTI Act, 2005.

13. Conversely, Shri Jai Pal Naik, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that when the petitioner was employed by the department, no appointment letter was issued. He admitted that as per the record there is no correspondence regarding the petitioner having left the job. He also admitted that no compensation has been given to the petitioner as per record. He feigned ignorance that the persons mentioned in para No.4 of the statement of claim are junior to the petitioner.

14. Ex. RW1/B is the mandays chart relating to the petitioner.

15. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the month of November, 1998 and that he had worked as such till December, 1999. The respondent in his reply admitted the fact that the department had engaged the petitioner as a daily waged beldar in the month November, 1998 and that he had worked as

such till November, 1999. However, it was claimed that he had been working intermittently during this period. Placed on record by the respondent is a copy of mandays chart of the petitioner as Ex. RW1/B. A perusal of this document discloses that the services of the petitioner were engaged by the respondent in the month of November, 1998 for the first time as a daily waged beldar and he had worked as such upto November, 1999. Therefore, in view of the ocular and documentary evidence on record, it is apparent that the petitioner had been engaged as a daily waged beldar on muster roll basis in November, 1998 and that he had worked as such upto November, 1999.

16. A plea was taken by the respondent that the petitioner was an intermittent worker. He had left the job of his own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In *Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand* reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Shri Jai Pal Naik (RW1) clearly admitted that as per the record there is no correspondence with the petitioner of his leaving the job. Thus, the plea of abandonment put forth by the respondent/employer is not established.

17. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of 12 calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. As per the copy of mandays Chart Ex. RW1/B, the petitioner had only worked for a total of 194 days from November, 1998 upto November, 1999. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

18. Ex. PW1/B, the mandays chart of beldar, namely, Shri Shashi Kant, reveals that he was appointed in the year 2000. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner, as per the pleadings and evidence of the parties on record is November, 1998. There is nothing on record to show that Shri Shashi Kant was senior to the petitioner. Shri Jai Pal Naik (RW1), while under cross-examination merely feigned ignorance to the fact that the persons named in para No.4 of the statement of claim were juniors to the petitioner. The aforesaid documentary evidence, which has gone un-rebutted on record, clearly indicates that a person junior to the petitioner was still serving with the respondent/department, after the alleged termination of the petitioner. Therefore, the latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of engaging a person junior to the petitioner, an opportunity of re-employment was afforded to him.

19. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Section 25-G of the Act.

20. Faced with the situation, it was contended for the respondent that the junior workers had been engaged and retained in service on compassionate grounds. Shri Jai Pal Naik (RW1) in his substantive evidence claimed that the workers mentioned in the para 4 of the statement of claim were engaged on compassionate grounds, as their parents had expired while in service. However, the dates of deaths of the parents of those persons have not come on the file. Admittedly, those persons are still serving with the respondent/department and their services were

engaged after the engagement of the services of the petitioner. There is nothing on record to show that the deceased parents of those persons mentioned in para No. 4 of the statement of claim were senior to the petitioner. Even if the petitioner has failed to prove on record that he had worked for more than 240 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, he was entitled for regularization of his service, but the respondent cannot be absolved from his accountability with regard to the provisions of Section 25-G of the Act, which as discussed above have been violated.

21. It was also claimed by the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. Except for his self serving and oral testimony, there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are not attracted in this case. That apart and more importantly, the petitioner was not entitled to invoke the provisions of Section 25-H of the Act and seek re-employment by citing the case of other employees, who were already in employment and whose services were regularized by the respondent on the basis of their service records in terms of the rules. To my mind, the regularization of the employees already in service does not give any right to the retrenched employee so as to enable him to invoke Section 25-H of the Act for claiming re-employment in the services. The reason is that by such act the employer does not offer any fresh employment to any person to fill any vacancy in their set up, but they simply regularize the services of any employee already in service. Such an act does not amount to filling any vacancy. The expression 'employment' signifies a fresh employment to fill the vacancies, whereas the expression 'regularization of the service' signifies that the employee, who is already in service, his services are regularized as per service regulations.

22. While testifying in the Court as PW1, the petitioner has given his age as 41 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he owns landed property and is doing agricultural chores. Besides this, it has also come in his evidence that nowadays he earns his livelihood by doing the days' drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

23. The learned Assistant District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. vs. Dilu Ram*** (CWP No. 95/2000 decided on 26-8-2004) wherein it was *inter alia* held:—

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Sing Vs. Sirhind Co-op. Marketing-cum-Processi Service Society Ltd.* 1999 (82) FLR 137 (SC)....”

24. In ***Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160***, delay of more than 10 years was condoned by our own Hon'ble High Court and it

was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon'ble Supreme Court in *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82 that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

25. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Joginder Nagar, District Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh *vide* his report under section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under section 10(1) of the Act, *vide* Notification No.11-1/7(Lab)ID/2016-Joginder Nagar, dated 20th August, 2016. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned Assistant District Attorney merits rejection and is rejected.

26. In case titled as *Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh* reported in 2013 (136) FLR 893 (SC), it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as *Deputy Executive Engineer vs. Kuberbhai Kanjibhai* 2019 (160) FLR 651, by relying upon the cases of *Bharat Sanchar Nigam Limited vs. Bhurumal* (2014) 7 SCC 177 and *District Development Officer & another vs. Satish Kantilal Amerelia* 2018 (156) FLR 266 (SC), it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as *State of Uttarakhand & Anr. vs. Raj Kumar*, 2019 (160) FLR 791, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about one year and that his services were disengaged in November, 1999 and who had worked as non-skilled worker and had raised the industrial dispute by issuance of demand notice after about *fourteen years i.e.* demand notice was given on 10-1-2014. It is also pertinent to mention here that the petitioner on the date of filing the claim petition was aged 41 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedent laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for lump sum compensation.

27. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹ 25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue No. 4 is answered in the negative and against the respondent.

Issue No. 3:

28. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief:

29. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ₹ 25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 415/2016
Date of Institution : 27-6-2016
Date of Decision : 25-03-2019

Shri Joginder Singh s/o Shri Hari Singh, r/o Village Lunder, P.O. Khel, Tehsil Nurpur,
District Kangra, H.P. *..Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D., Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division Jawali, Tehsil Nurpur, District Kangra, H.P.
..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.
For the Respondent(s) : Sh. Tarsem Kumar, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Joginder Singh s/o Shri Hari Singh, r/o Village Lunder, P.O. Khel, Tehsil Nurpur, District Kangra, H.P. during year 1990 by (1) The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after about 21 years *vide* demand notice dated-nil-received on 13-06-2011, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis in the year 1978 in HPPWD Sub-Divisions-I and II, Nurpur and had worked as such till the year 1990, when his services were illegally terminated by the respondents. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the re-engaged employees as detailed in para No. 3 of the petition. The mates of the petitioner were S/Shri Sahib Singh and Roshan Lal. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No. 1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were re-engaged on 25-5-2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his re-engagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“that the termination/retranchment of the petitioner by the employer/opposite party be declared null and void and he be ordered to be re-engaged at that very place, from where he was retrrenched alongwith all consequential benefits and other allowances and salary, besides other benefits and regularization after 10 years of service with seniority and back wages alongwith interest @18% per annum. Other relief(s) be also provided to the petitioner, as deemed fit”.

3. On notice, the respondents appeared. Only respondent No.1 filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on the grounds of delay and laches have been taken.

On merits, it is denied that the services of the petitioner had been engaged as beldar in the year 1978 in HPPWD Division, Nurpur. It is also denied that the petitioner was disengaged by the respondents in the year 1990. It is asserted that he was engaged as a daily wager by HPPWD Sub-Division Suliali, Division Jassur and had worked intermittently *w.e.f.* January, 1986 upto August, 1987. He had not completed 240 days in every calendar year. The petitioner thereafter had left the work of his own sweet will and had never approached the department. It is claimed that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It is denied that respondent No.1 had re-engaged workers on 25-5-2010. Infact workers were re-engaged by the respondent as per the orders of the Hon'ble High Court. It is admitted that HPPWD Divisions Nurpur and Jawali are involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. It is denied that a pick and choose policy had been adopted by the respondents. Neither any junior had been retained nor engaged by the respondent, so there was no violation of the provisions of Sections 25-G and 25-H of the Act. It is denied that the petitioner had made various requests and that assurances had been given to him by the respondents. After leaving the work in August, 1987, the petitioner had never approached the respondents and had raised the demand notice only in the year 2011, *i.e.* after about 21 years.

In these circumstances, respondent No.1 prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by respondent No.1.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 07-10-2017:—

- (1) Whether termination of the services of petitioner by the respondents during year, 1990 is/was improper and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged. ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Joginder Singh examined himself as PW1 and also

examined Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19-8-1998 as Ex. PW1/B, copy of letter dated 18-12-1999 as Ex. PW1/C, copy of notice dated 4-5-2002 as Ex. PW1/D, copy of resolution dated 18-7-2002 as Ex. PW1/E, copy of UPC and registered postal receipts as Ex. PW1/F & G and copy of letter dated 18-1-2000 as Ex. PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23-7-1994 as Ex. RW1/C, copy of office order dated 29-11-2010 as Ex. RW1/D, copy of letter dated 19-8-1998 as Ex. RW1/E, copy of application dated 18-12-1999 filed by Kusum Lata as Ex. RW1/F, copy of letter dated 18-1-2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of working days chart of Smt. Kusum Lata as Ex. RW1/I & Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Yes
Issue No.	: Not pressed
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Joginder Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification No. PBW-(A)-A(1)17/94. He denied that he had not worked with the respondents. Volunteered that, he had worked regularly from the year 1978 upto the year 1990. He denied that he had never worked for the period from the year 1978 upto December, 1985 and from September, 1987 upto the year 1990. He also denied that he had only worked for 239 days from January, 1986 upto August, 1987. He further denied that no breaks had been given by the department. He also denied that he was never disengaged by the respondent/department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

12. Ex. PW1/B is the copy of letter dated 19-8-1998 regarding the posting of Smt. Kusum Sharma as a daily waged Store Clerk.

13. Ex. PW1/C is the copy of letter dated 18-12-1999 to the Chief Executive Engineer, HPPWD, US Club, Shimla by Smt. Kusum Lata.

14. Ex. PW1/D is the copy of letter dated 4-5-2002 regarding notice under section 80 of CPC to The Secretary, H.P. Public Works Department, Government of Himachal Pradesh, Shimla.

15. Ex. PW1/E is the copy of letter dated 18-7-2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh.

16. Ex. PW1/F is the copy of letter/UPC dated 18-7-2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh and others.

17. Ex. PW1/G is the copy of postal receipts.

18. Ex. PW1/H is the copy of letter dated 18-1-2000 from Chief Engineer, HPPWD, Shimla to Executive Engineer, HPPWD, 9th Circle, HPPWD, Nurpur.

19. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 upto the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

20. PW3 Shri Harnam Singh stated that he was engaged in the year 1984-85 in HPPWD Division, Nurpur. After about one year, he had become a mate. He was removed by the department in the year 1990, when he obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

21. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

22. In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29-11-2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

23. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to shift of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

24. Ex. RW1/C is the copy of Office Order dated 23-7-1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

25. Ex. RW1/D is the copy of another Office Order dated 29-11-2010 with regard to implementation of the award of this Court dated 22-12-2007.

26. Ex. RW1/E is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

27. Ex. RW1/F is the copy of letter dated 18-12-1999 regarding representation of Smt. Kusum Lata.

28. Ex. RW1/G is the copy of letter dated 18-1-2000 written by the Engineer-in-Chief HPPWD Shimla to the Superintending Engineer, 9th Circle, H.P. HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

29. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

30. Ex. RW1/I is the copy of working days chart of Smt. Kusum Lata working under Banikhet Sub-Division HPPWD Banikhet.

31. Ex. RW1/J is the copy of working days chart of Smt. Kusum Lata working under Suliali Sub-Division HPPWD Suliali.

32. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondents in the year 1978 and that he had worked as such upto the year 1990. The respondents took the stand that the petitioner had been engaged as a daily waged beldar in HPPWD Sub-Division Suliali *w.e.f.* January, 1986 and that he had worked intermittently upto August, 1987. The petitioner denied this case of the respondents. He while under cross-examination categorically denied that he had worked with the department from January, 1986 upto August, 1987 only. However, the respondents have placed and proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. Its perusal discloses that the services of the petitioner were engaged by respondent No. 2 in the month of January, 1986 for the first time as a daily waged beldar and he had worked as such upto August, 1987. The claimant/petitioner has not placed and exhibited on record any document to show that he had regularly worked with the respondents from the year 1978 upto the year 1990.

33. A plea was taken by the respondents that the petitioner had abandoned the work himself. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In *Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand* reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondents calling upon him to resume the duties. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceeding were initiated against the petitioner by the respondents for his alleged willful absence from duty. Thus, the plea of abandonment put forth by the respondents/employers is not established.

34. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of 12 calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. As per the mandays chart Ex. RW1/H, the petitioner had only worked for 148 days in the year 1986 and 91 days in the year 1987. Thus, in his total service for a period of about one year in between January, 1986 to August, 1987, he had only worked for 239 days. Therefore, the provisions of Sections 25-F and 25-N of the Act are not attracted in this case.

35. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondents. A detail of such persons has been given in para 3 of the statement of claim. Shri Joginder Singh (PW1) also named such persons to be junior to him in his chief-examination, being in the shape of affidavit Ex. PW1/A. The respondents, and in particular respondent No.1, refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the respondents after his alleged termination. Significantly, no seniority list has been placed and exhibited on record or any other witness examined so as to show that the persons named in the statement of claim and in his affidavit by the petitioner were junior to him and who had been retained by the respondents at the time of the termination of his services. The statements of the witnesses examined by the petitioner as Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3) are also silent in this regard. There is also no whisper in their testimonies that persons junior to the petitioner are still in service. PW3 Shri Harnam Singh claimed that his services were engaged by respondent No.1 in the year 1984-85, whereas, it is apparent from the record that the services of petitioner as daily waged beldar for the first time were engaged by respondent No. 2 in the month of January, 1986. So, as per the own testimony of this witness of the petitioner, he was senior to the petitioner. Shri Sukar Deen (PW2) claimed himself to have been engaged by respondent No.1 in the year 1986. He has not mentioned in his substantive evidence the date and month of his initial engagement. It is also not made out from his sworn testimony that he was junior to the petitioner. So, the testimonies of the aforesaid witnesses are of no help to the petitioner to establish on record that the principle of 'last come first go' had not been adhered to by the respondents. Then, no prayer had ever been made by the petitioner for the production of the seniority list from the respondents during the pendency of this case.

36. Faced with the situation, by referring to the copy of mandays chart pertaining to Smt. Kusum Lata which has been placed on record by respondent No.1 as Ex. RW1/J, it was contended by the Learned Counsel for the petitioner that she is certainly junior to the petitioner, as she is shown to have been engaged in service in Suliali Sub-Division, HPPWD Suliali in February, 2000. This cannot be accepted. Placed on record by respondent No.1 is another copy of mandays chart pertaining to said Smt. Kusum Lata as Ex. RW1/I. As per this document Smt. Kusum Lata had initially been engaged in the month of November, 1983 in Sub-Division No.1 HPPWD, Banikhet and that she had continued to work as such there uptil November, 1988. Placed on record is also her representation to the Engineer-in-Chief, HPPWD Shimla, copy of which is Ex. RW1/F. On her representation, it is evident that she stood transferred and posted as a daily waged Store Clerk from 7th Circle HPPWD Dalhousie to 9th Circle HPPWD Nurpur. Reference in this regard can be made to the copy of letter dated 18-1-2000 of Engineer-in-Chief, HPPWD Shimla, Ex. RW1/G. On allotment of one post of Store Clerk in 9th Circle, HPPWD Nurpur, *vide* the aforesaid letter, Smt. Kusum Lata was adjusted as such there, where she has been working regularly from the year 2000 uptil January, 2009, as is evident from the copy of her mandays days chart, Ex. RW1/J. So, she can also not be termed as a junior to the petitioner. There is nothing on record to show that the services of said Smt. Kusum Lata had ever been disengaged at any point of time. Rather she appears to have been working with the HPPWD Division Nurpur. Her joining in the 9th Circle HPPWD Nurpur, on her request in the month of February, 2000 cannot make her a junior to the petitioner, particularly

when her year of joining is much prior to that of the petitioner in the HPPWD department *i.e.* she was engaged in the year 1983, whereas the petitioner, as discussed above, had initially been engaged in the year 1986. So, it cannot be said that Smt. Kusum Lata being a junior to the petitioner had been retained in service by the respondents. Therefore, it cannot be said that the respondents had violated the principle of 'last come first go', as envisaged in Section 25-G of the Act.

37. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands have been engaged by the respondents. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

38. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

39. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4:

40. Not pressed.

Relief:

41. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	: 816/2016
Date of Institution	: 24-11-2016
Date of Decision	: 25-03-2019

Shri Finu Ram s/o Shri Kirpa Ram, r/o Village Samula, P.O. Sadwan, Tehsil Nurpur, District Kangra, H.P. ..Petitioner.

Versus

1. The Executive Engineer, Nurpur Division, H.P.P.W.D., Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Jawali Division, Jawali, District Kangra, H.P. ..Respondents.

Reference under Section 10 (1) of the Industrial Disputes

For the Petitioner : Sh. Naresh Kaul, Adv.
For the Respondent(s) : Sh. Tarsem Kumar, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Shri Finu Ram s/o Shri Kirpa Ram, r/o Village Samula and P.O. Sadwan, Tehsil Nurpur, District Kangra, H.P. during 08/1987 by (i) The Executive Engineer, Nurpur Division, HPPWD, Nurpur, District Kangra, H.P. (ii) The Executive Engineer, Jawali Division HPPWD Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after about 23 years *vide* demand notice dated nil received in the office of Labour Officer Dharamshala on 13-06-2011 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of about 23 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis in the year 1983 in HPPWD Sub-Divisions-I and II, Nurpur and had worked as such till the year 1990, when his services were illegally terminated by the respondents. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the re-engaged employees as detailed in para No. 3 of the petition. The mates of the petitioner were S/Shri Relu Ram, Karnail, Satpal and Guddu, while Junior Engineer was Shri Dutta. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were re-engaged on 25-5-2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his re-engagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the

Act' for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“that the termination/retrenchment of the petitioner by the employer/opposite party be declared null and void and he be ordered to be re-engaged at that very place, from where he was retrenched alongwith all consequential benefits and other allowances and salary, besides other benefits and regularization after 10 years of service with seniority and back wages alongwith interest @18% per annum. Other relief(s) be also provided to the petitioner, as deemed fit”.

3. On notice, the respondents appeared. Only respondent No.1 filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on the grounds of delay and laches have been taken.

On merits, it is denied that the services of the petitioner had been engaged as beldar in the year 1983 in HPPWD Division, Nurpur. It is also denied that the petitioner was disengaged by the respondents in the year 1990. It is asserted that he was engaged as a daily wager by HPPWD Sub-Division Suliali, Division Jassur and had worked intermittently *w.e.f.* January, 1987 upto August, 1987. He had not completed 240 days in every calendar year. The petitioner thereafter had left the work of his own sweet will and had never approached the department. It is claimed that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It is denied that respondent No.1 had re-engaged workers on 25-5-2010. Infact workers were re-engaged by the respondents as per the orders of the Hon'ble High Court. It is admitted that HPPWD Divisions Nurpur and Jawali are involved in the construction and maintenance of roads, buildings bridges, repair and maintenance of tools and plants etc. It is denied that a pick and choose policy had been adopted by the respondents. Neither any junior had been retained nor engaged by the respondent, so there was no violation of the provisions of Sections 25-G and 25-H of the Act. It is denied that the petitioner had made various requests and that assurances had been given to him by the respondents. After leaving the work in August, 1987, the petitioner had never approached the respondents and had raised the demand notice only in the year 2011, *i.e.* after about 21 years.

In these circumstances, respondent No.1 prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by respondent No.1.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24-3-2018:

- (1) Whether termination of services of the petitioner by the respondents during August, 1987 is/was illegal and unjustified as alleged? ..OPP.
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.

- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? ..*OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Finu Ram examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19-8-1998 as Ex. PW1/B, copy of letter dated 18-12-1999 as Ex. PW1/C, copy of notice dated 4-5-2002 as Ex. PW1/D, copy of resolution dated 18-7-2002 as Ex. PW1/E, copy of UPC and registered postal receipts as Ex. PW1/F & G and copy of letter dated 18-1-2000 as Ex. PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23-7-1994 as Ex. RW1/C, copy of office order dated 29-11-2010 as Ex. RW1/D, copy of letter dated 19-8-1998 as Ex. RW1/E, copy of application dated 18-12-1999 filed by Kusum Lata as Ex. RW1/F, copy of letter dated 18-1-2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of working days chart of Smt. Kusum Lata as Ex. RW1/I & Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Yes
Issue No. 4	: Not pressed
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Finu Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification No. PBW-(A)-A(1)17/94. He denied that he had not worked with the respondents. Volunteered that, he had worked regularly from the year 1983 upto the year 1990. He denied that he had never worked for the period from the year 1983 upto July 1986 and from

September, 1987 upto the year 1990. He also denied that he had only worked for 169.5 days from August, 1986 upto August, 1987. He further denied that no breaks had been given by the department. He also denied that he was never disengaged by the respondent/department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

12.Ex. PW1/B is the copy of letter dated 19-8-1998 regarding the posting of Smt. Kusum Sharma as a daily waged Store Clerk.

13. Ex. PW1/C is the copy of letter dated 18-12-1999 to the Chief Executive Engineer, HPPWD, US Club, Shimla by Smt. Kusum Lata.

14. Ex. PW1/D is the copy of letter dated 4-5-2002 regarding notice under Section 80 of CPC to The Secretary, H.P. Public Works Department, Government of Himachal Pradesh, Shimla.

15. Ex. PW1/E is the copy of letter dated 18-7-2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh.

16. Ex. PW1/F is the copy of letter/UPC dated 18-7-2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh and others.

17. Ex. PW1/G is the copy of postal receipts.

18. Ex. PW1/H is the copy of letter dated 18-1-2000 from Chief Engineer, HPPWD, Shimla to Executive Engineer, HPPWD, 9th Circle, HPPWD, Nurpur.

19. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 upto the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

20. PW3 Shri Harnam Singh stated that he was engaged in the year 1984-85 in HPPWD Division, Nurpur. After about one year, he had become a mate. He was removed by the department in the year 1990, when he obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

21. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

22. In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch

work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29-11-2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

23. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to shift of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

24. Ex. RW1/C is the copy of Office Order dated 23-7-1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

25. Ex. RW1/D is the copy of another Office Order dated 29-11-2010 with regard to implementation of the award of this Court dated 22-12-2007.

26. Ex. RW1/E is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

27. Ex. RW1/F is the copy of letter dated 18-12-1999 regarding representation of Smt. Kusum Lata.

28. Ex. RW1/G is the copy of letter dated 18-1-2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, H.P. HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

29. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

30. Ex. RW1/I is the copy of working days chart of Smt. Kusum Lata working under Banikhet Sub-Division HPPWD Banikhet.

31. Ex. RW1/J is the copy of working days chart of Smt. Kusum Lata working under Suliali Sub-Division HPPWD Suliali.

32. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondents in the year 1983 and that he had worked as such upto the year 1990.

The respondents took the stand that the petitioner had been engaged as a daily waged beldar in HPPWD Sub-Division Suliali *w.e.f.* January, 1987 and that he had worked intermittently upto August, 1987. The petitioner denied this case of the respondents. He while under cross-examination categorically denied that he had worked with the department from January, 1987 upto August, 1987 only. However, the respondents have placed and proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. Its perusal discloses that the services of the petitioner were engaged by respondent No.2 in the month of August, 1986 for the first time as a daily waged beldar and he had worked as such upto August, 1987. The claimant/petitioner has not placed and exhibited on record any document to show that he had regularly worked with the respondents from the year 1983 upto the year 1990.

33. A plea was taken by the respondents that the petitioner had abandoned the work himself. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand*** reported in [2019

(160) *FLR 16*], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondents calling upon him to resume the duties. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondents for his alleged willful absence from duty. Thus, the plea of abandonment put forth by the respondents/employers is not established.

34. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of 12 calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. As per the mandays chart Ex. RW1/H, the petitioner had only worked for 85½ days in the year 1986 and 84 days in the year 1987. Thus, in his total service for a period of about one year in between August, 1986 to August, 1987, he had only worked for 169½ days. Therefore, the provisions of Sections 25-F and 25-N of the Act are not attracted in this case.

35. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondents. A detail of such persons has been given in para 3 of the statement of claim. Shri Finu Ram (PW1) also named such persons to be junior to him in his chief-examination, being in the shape of affidavit Ex. PW1/A. The respondents, and in particular respondent No.1, refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the respondents after his alleged termination. Significantly, no seniority list has been placed and exhibited on record or any other witness examined so as to show that the persons named in the statement of claim and in his affidavit by the petitioner were junior to him and who had been retained by the respondents at the time of the termination of his services. The statements of the witnesses examined by the petitioner as Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3) are also silent in this regard. There is also no whisper in their testimonies that persons junior to the petitioner are still in service. PW3 Shri Harnam Singh claimed that his services were engaged by respondent No.1 in the year 1984-85, whereas, it is apparent from the record that the services of petitioner as daily waged beldar for the first time were engaged by respondent No.2 in the month of August, 1986. So, as per the own testimony of this witness of the petitioner, he was senior to the petitioner. Shri Sukar Deen (PW2) claimed himself to have been engaged by respondent No.1 in the year 1986. He has not mentioned in his substantive evidence the date and month of his initial engagement. It is also not made out from his sworn testimony that he was junior to the petitioner. So, the testimonies of the aforesaid witnesses are of no help to the petitioner to establish on record that the principle of 'last come first go' had not been adhered to by the respondents. Then, no prayer had ever been made by the petitioner for the production of the seniority list from the respondents during the pendency of this case.

36. Faced with the situation, by referring to the copy of mandays chart pertaining to Smt. Kusum Lata which has been placed on record by respondent No.1 as Ex. RW1/J, it was contended by the Learned Counsel for the petitioner that she is certainly junior to the petitioner, as she is shown to have been engaged in service in Suliali Sub-Division, HPPWD Suliali in February, 2000. This cannot be accepted. Placed on record by respondent No.1 is another copy of mandays chart pertaining to said Smt. Kusum Lata as Ex. RW1/I. As per this document Smt. Kusum Lata had initially been engaged in the month of November, 1983 in Sub-Division No.1 HPPWD, Banikhet and that she had continued to work as such there uptil November, 1988. Placed on record is also her representation to the Engineer-in-Chief, HPPWD Shimla, copy of which is Ex. RW1/F. On her representation, it is evident that she stood transferred and posted as a daily waged Store Clerk from 7th Circle HPPWD Dalhousie to 9th Circle HPPWD Nurpur. Reference in this regard can be made to the copy of letter dated 18-1-2000 of

Engineer-in-Chief, HPPWD Shimla, Ex. RW1/G. On allotment of one post of Store Clerk in 9th Circle, HPPWD Nurpur, *vide* the aforesaid letter, Smt. Kusum Lata was adjusted as such there, where she has been working regularly from the year 2000 upto January, 2009, as is evident from the copy of her mandays days chart, Ex. RW1/J. So, she can also not be termed as a junior to the petitioner. There is nothing on record to show that the services of said Smt. Kusum Lata had ever been disengaged at any point of time. Rather she appears to have been working with the HPPWD Division Nurpur. Her joining in the 9th Circle HPPWD Nurpur, on her request in the month of February, 2000 cannot make her a junior to the petitioner, particularly when her year of joining is much prior to that of the petitioner in the HPPWD department *i.e.* she was engaged in the year 1983, whereas the petitioner, as discussed above, had initially been engaged in the year 1986. So, it cannot be said that Smt. Kusum Lata being a junior to the petitioner had been retained in service by the respondents. Therefore, it cannot be said that the respondents had violated the principle of 'last come first go', as envisaged in Section 25-G of the Act.

37. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands have been engaged by the respondents. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

38. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

39. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4:

40. Not pressed.

Relief:

41. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No.	: 891/2016
Date of Institution	: 24-12-2016
Date of Decision	: 25-03-2019

Shri Nirmal Singh s/o Shri Raghu Nath Singh, r/o V.P.O. Khanni, Tehsil Nurpur,
District Kangra, H.P. ..Petitioner.

Versus

1. The Executive Engineer, Nurpur Division, H.P.P.W.D., Nurpur, Tehsil Nurpur,
District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P. *..Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. Naresh Kaul, Adv.
For the Respondent(s)	: Sh. Tarsem Kumar, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Shri Nirmal Singh s/o Shri Raghu Nath Singh, r/o V.P.O. Khanni, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (i) the Executive Engineer, H.P.P.W.D., Division Nurpur, District Kangra, H.P. (ii) the Executive Engineer, H.P.P.W.D., Division Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after about 23 years *vide* demand notice dated nil received in the Labour Office Kangra at Dharamshala on 04-03-2013, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of about 23 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis in the month of February, 1988 in HPPWD Sub-Divisions-I and II, Nurpur and had worked as such till the year 1990, when his services were illegally terminated by the respondents. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the re-engaged employees as detailed in para No.3 of the petition. The mates of the petitioner were S/Shri Kewal Singh and Suresh Kumar. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were re-engaged on 25-5-2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from

the side of the department, the petitioner had communicated in writing for his re-engagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retranchment is illegal and arbitrary.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“that the termination/retranchment of the petitioner by the employer/opposite party be declared null and void and he be ordered to be re-engaged at that very place, from where he was retrrenched alongwith all consequential benefits and other allowances and salary, besides other benefits and regularization after 10 years of service with seniority and back wages alongwith interest @18% per annum. Other relief(s) be also provided to the petitioner, as deemed fit”.

3. On notice, the respondents appeared. Only respondent No.1 filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on the grounds of delay and laches have been taken.

On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from the year 1988 upto the year 1990. It was asserted that the petitioner had never been engaged by the respondent so the question of completing 240 days did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondent, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondent. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, *i.e.* after about 21 years.

In these circumstances, respondent No.1 prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by respondent No.1.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24-3-2018:

- (1) Whether termination of services of the petitioner by the respondents during year, 1990 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR.*

- (4) Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? ..OPR.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Nirmal Singh examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19-8-1998 as Ex. PW1/B, copy of letter dated 18-12-1999 as Ex. PW1/C, copy of notice dated 4-5-2002 as Ex. PW1/D, copy of resolution dated 18-7-2002 as Ex. PW1/E, copy of UPC and registered postal receipts as Ex. PW1/F & G and copy of letter dated 18-1-2000 as Ex. PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23-7-1994 as Ex. RW1/C, copy of office order dated 29-11-2010 as Ex. RW1/D, copy of letter dated 19-8-1998 as Ex. RW1/E, copy of application dated 18-12-1999 filed by Kusum Lata as Ex. RW1/F, copy of letter dated 18-1-2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of working days chart of Smt. Kusum Lata as Ex. RW1/I & Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Yes
Issue No. 4	: Not pressed/redundant
Relief	: Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Nirmal Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification No. PBW-(A)-A(1)17/94. He admitted that he had never worked in Jawali Division. Volunteered that, he had worked in Nurpur Division. He denied that he had not worked in Nurpur Division. He also denied that he had never worked with the respondents. Self stated that, he had worked regularly from the year 1988 uptil the year 1990. He denied that he had never worked for the period from the year 1988 uptil the year 1990. He further denied that he

was never disengaged by the respondent/department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

12. Ex. PW1/B is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as a daily waged Store Clerk.

13. Ex. PW1/C is the copy of letter dated 18-12-1999 to the Chief Executive Engineer, HPPWD, US Club, Shimla by Smt. Kusum Lata.

14. Ex. PW1/D is the copy of letter dated 4-5-2002 regarding notice under Section 80 of CPC to the Secretary, H.P. Public Works Department, Government of Himachal Pradesh, Shimla.

15. Ex. PW1/E is the copy of letter dated 18-7-2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh.

16. Ex. PW1/F is the copy of letter/UPC dated 18-7-2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh and others.

17. Ex. PW1/G is the copy of postal receipts.

18. Ex. PW1/H is the copy of letter dated 18-1-2000 from Chief Engineer, HPPWD, Shimla to Executive Engineer, HPPWD, 9th Circle, HPPWD, Nurpur.

19. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 upto the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

20. PW3 Shri Harnam Singh stated that he was engaged in the year 1984-85 in HPPWD Division, Nurpur. After about one year, he had become a mate. He was removed by the department in the year 1990, when he had obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

21. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

22. In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the

monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29-11-2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

23. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to shift of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

24. Ex. RW1/C is the copy of Office Order dated 23-7-1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

25. Ex. RW1/D is the copy of another Office Order dated 29-11-2010 with regard to implementation of the award of this Court dated 22-12-2007.

26. Ex. RW1/E is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

27. Ex. RW1/F is the copy of letter dated 18-12-1999 regarding representation of Smt. Kusum Lata.

28. Ex. RW1/G is the copy of letter dated 18-1-2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, H.P. HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

29. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

30. Ex. RW1/I is the copy of working days chart of Smt. Kusum Lata working under Banikhet Sub-Division HPPWD Banikhet.

31. Ex. RW1/J is the copy of working days chart of Smt. Kusum Lata working under Suliali Sub-Division HPPWD Suliali.

32. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the month of February, 1988 and that he had worked as such upto the year 1990. It was the stand taken by respondent No.1 that the petitioner had never been engaged by the department. Although, the petitioner (PW1) in his cross-examination denied the fact that he had never been engaged as a daily waged beldar in the month of February, 1988 by the respondent and that he had not worked as such upto the year 1990, but, however, respondent No.1 has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. This mandays chart pertains to HPPWD Division Jawali. Its perusal reveals that the petitioner had not worked with respondent No. 2 even for a single day from the year 1988 upto the year 1990. The petitioner in his substantive evidence also clearly admitted that he never worked in Jawali Division. No mandays chart has been proved on record by the petitioner showing him to have ever worked with respondent No. 1. In view of this fact, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that there existed a relationship of employer and employee/workman in between the parties. Significantly, the petitioner neither in his pleadings, nor in his ocular evidence has stated the date on which he was engaged by respondent No.1. There is also no pleading or evidence to the effect as to on which specific date his services stood terminated by this respondent. Only the months and years of joining and termination of the petitioner stand specified in the statement of claim and his statement by way of

affidavit Ex. PW1/A. Although, witnesses, namely, Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3), were examined by the petitioner in support of his case, but I find that their statements are of no help to him, as their service records were not brought on record to show that they had ever been engaged by the department. Then, it is nowhere the case of the petitioner that he had ever marked his attendance in all those three years, the period for which he claims to have worked with the respondent. Had there been any attendance register in which the petitioner had appended his signatures, he ought to have placed and exhibited on record the same so as to show that his services had been engaged by the respondent from the year 1988 upto the year 1990. But, so is not the case here. No such attendance register has seen the light of the day, nor any prayer had been made by the petitioner for the production of the same from the respondents during the pendency of this case. Further, he could have easily proved the muster rolls for the period for which he had worked. But, no such muster roll has been produced. Even no appointment letter to show that the services of the petitioner had been engaged by the respondents, has been placed on record by him.

33. From the ocular and documentary evidence of respondent No.1 available on record, it can be gathered that the petitioner had never been appointed in any capacity at any point of time by the respondents.

34. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondents, therefore, the provisions of Section 25-F of the Act are not attracted in this case. The respondents can also not be held to have violated the provisions of Sections 25-G, 25-H and 25-N of the Act, as the relationship of the petitioner and the respondents being that of a workman and employer stands not established on record.

35. In view of the discussion and findings aforesaid, it appears to me that the avarice of the petitioner to grab government job and money had forced him to file a totally false and baseless claim. He is not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

36. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4

37. Not pressed. Even otherwise, the plea of delay and laches would have been relevant, had the petitioner been able to prove the demand notice as well as the fact of he being a workman under the respondents for the alleged period. Hence, this issue becomes redundant.

Relief:

38. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition being meritless, not maintainable and malafide, fails. It is, therefore, dismissed with costs quantified at ₹ 5,000/-. The reference is answered accordingly. A

copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	: 861/2016
Date of Institutio	: 26-11-2016
Date of Decision	: 27-03-2019

Shri Kikar Singh s/o Shri Gurudev Singh, r/o Village Barnoli, P.O. Bhadwar, Tehsil Nurpur, District Kangra, H.P. *..Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D., Division, Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P. *..Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. Naresh Kaul, Adv.
For the Respondent(s)	: Sh. Tarsem Kumar, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Shri Kikar Singh s/o Shri Gurudev Singh, r/o Village Barnoli, P.O. Bhadwar, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (i) the Executive Engineer, H.P.P.W.D., Division Nurpur, District Kangra, H.P. (ii) the Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after more than 22 years *vide* demand notice dated nil received in the Labour Office Dharamshala on 04-03-2013, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of more than 22 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis in the year 1986 in HPPWD Sub-Divisions-I and II, Nurpur and had worked as such till the year 1990, when his

services were illegally terminated by the respondents. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the reengaged employees as detailed in para No.3 of the petition. The mate of the petitioner was Shri Tarveez Singh. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were re-engaged on 25-5-2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his re-engagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“that the termination/retrenchment of the petitioner by the employer/opposite party be declared null and void and he be ordered to be re-engaged at that very place, from where he was retrenched alongwith all consequential benefits and other allowances and salary, besides other benefits and regularization after 10 years of service with seniority and back wages alongwith interest @18% per annum. Other relief(s) be also provided to the petitioner, as deemed fit”.

3. On notice, the respondents appeared. Only respondent No.1 filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on the grounds of delay and laches have been taken.

On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* HP Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from 1986 upto the year 1990. It was asserted that the petitioner had never been engaged by the respondent so the question of completing 240 days did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondent, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondent. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, *i.e.* after about 21 years.

In these circumstances, respondent No.1 prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by respondent No.1.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24-3-2018:—

- (1) Whether termination of services of the petitioner by the respondents during year, 1990 is/was illegal and unjustified as alleged? ..*OPP*.
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR*.
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? ..*OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Kikar Singh examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19-8-1998 as Ex. PW1/B, copy of letter dated 18-12-1999 as Ex. PW1/C, copy of notice dated 4-5-2002 as Ex. PW1/D, copy of resolution dated 18-7-2002 as Ex. PW1/E, copy of UPC and registered postal receipts as Ex. PW1/F & G and copy of letter dated 18-1-2000 as Ex. PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23-7-1994 as Ex. RW1/C, copy of office order dated 29-11-2010 as Ex. RW1/D, copy of letter dated 19-8-1998 as Ex. RW1/E, copy of application dated 18-12-1999 filed by Kusum Lata as Ex. RW1/F, copy of letter dated 18-1-2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of working days chart of Smt. Kusum Lata as Ex. RW1/I & Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Yes
Issue No. 4	: Not pressed/redundant
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Kikar Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification No.PBW-(A)-A(1)17/94. He admitted that he had never worked in Jawali Division. Volunteered that, he had worked in Nurpur Division. He denied that he had not worked in Nurpur Division. He also denied that he had never worked with the respondents. Self stated that, he had worked regularly from the year 1986 upto the year 1990. He denied that he had never worked for the period from the year 1986 upto the year 1990. He further denied that he was never disengaged by the respondent/department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

12. Ex. PW1/B is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as a daily waged Store Clerk.

13. Ex. PW1/C is the copy of letter dated 18-12-1999 to the Chief Executive Engineer, HPPWD, US Club, Shimla by Smt. Kusum Lata.

14. Ex. PW1/D is the copy of letter dated 4-5-2002 regarding notice under Section 80 of CPC to the Secretary, H.P. Public Works Department, Government of Himachal Pradesh, Shimla.

15. Ex. PW1/E is the copy of letter dated 18-7-2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh.

16. Ex. PW1/F is the copy of letter/UPC dated 18-7-2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh and others.

17. Ex. PW1/G is the copy of postal receipts.

18. Ex. PW1/H is the copy of letter dated 18-1-2000 from Chief Engineer, HPPWD, Shimla to Executive Engineer, HPPWD, 9th Circle, HPPWD, Nurpur.

19. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 upto the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

20. PW3 Shri Harnam Singh stated that he was engaged in the year 1984-85 in HPPWD Division, Nurpur. After about one year, he had become a mate. He was removed by the department in the year 1990, when he had obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was

categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

21. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurgpur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

22. In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurgpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurgpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurgpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29-11-2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

23. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to shift of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

24. Ex. RW1/C is the copy of Office Order dated 23-7-1994 regarding the closure of HPPWD Jassur Division at Nurgpur and its functioning at Jawali, HPPWD Jawali Division.

25. Ex. RW1/D is the copy of another Office Order dated 29-11-2010 with regard to implementation of the award of this Court dated 22-12-2007.

26. Ex. RW1/E is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

27. Ex. RW1/F is the copy of letter dated 18-12-1999 regarding representation of Smt. Kusum Lata.

28. RW1/G is the copy of letter dated 18-1-2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, HP HPPWD, Nurgpur relating to the engagement of Store Clerk on daily waged basis.

29. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

30. Ex. RW1/I is the copy of working days chart of Smt. Kusum Lata working under Banikhet Sub-Division HPPWD Banikhet.

31. Ex. RW1/J is the copy of working days chart of Smt. Kusum Lata working under Suliali Sub-Division HPPWD Suliali.

32. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the year 1986 and that he had worked as such upto the year 1990. It was the stand taken by respondent No.1 that the petitioner had never been engaged by the department. Although, the petitioner (PW1) in his cross-examination denied the fact that he had never been engaged as a daily waged beldar in the year 1986 by the respondents and that he had not worked as such upto the year 1990, but, however, respondent No.1 has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. This mandays chart pertains to HPPWD

Division Jawali. Its perusal reveals that the petitioner had not worked with respondent No.2 even for a single day from the year 1986 upto the year 1990. The petitioner in his substantive evidence also clearly admitted that he never worked in Jawali Division. No mandays chart has been proved on record by the petitioner showing him to have ever worked with respondent no.1. In view of this fact, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that there existed a relationship of employer and employee/workman in between the parties. Significantly, the petitioner neither in his pleadings, nor in his ocular evidence has stated the date on which he was engaged by respondent No.1. There is also no pleading or evidence to the effect as to on which specific date his services stood terminated by this respondent. Only the months and years of joining and termination of the petitioner stand specified in the statement of claim and his statement by way of affidavit Ex. PW1/A. Although, witnesses, namely, Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3), were examined by the petitioner in support of his case, but I find that their statements are of no help to him, as their service records were not brought on record to show that they had ever been engaged by the department. Then, it is nowhere the case of the petitioner that he had ever marked his attendance in all those five years, the period for which he claims to have worked with the respondent. Had there been any attendance register in which the petitioner had appended his signatures, he ought to have placed and exhibited on record the same so as to show that his services had been engaged by the respondents from the year 1986 upto the year 1990. But, so is not the case here. No such attendance register has seen the light of the day, nor any prayer had been made by the petitioner for the production of the same from the respondents during the pendency of this case. Further, he could have easily proved the muster rolls for the period for which he had worked. But, no such muster roll has been produced. Even no appointment letter to show that the services of the petitioner had been engaged by the respondents, has been placed on record by him.

33. From the ocular and documentary evidence of respondent No.1 available on record, it can be gathered that the petitioner had never been appointed in any capacity at any point of time by the respondents.

34. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondents, therefore, the provisions of Section 25-F of the Act are not attracted in this case. The respondents can also not be held to have violated the provisions of Sections 25-G, 25-H and 25-N of the Act, as the relationship of the petitioner and the respondents being that of a workman and employer stands not established on record.

35. In view of the discussion and findings aforesaid, it appears to me that the avarice of the petitioner to grab government job and money had forced him to file a totally false and baseless claim. He is not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue no. 3:

36. Taking into account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a mala fide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

37. Not pressed. Even otherwise, the plea of delay and laches would have been relevant, had the petitioner been able to prove the demand notice as well as the fact of he being a workman under the respondents for the alleged period. Hence, this issue becomes redundant.

Relief:

38. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition being meritless, not maintainable and malafide, fails. It is, therefore, dismissed with costs quantified at Rs. 5,000/-. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	: 896/2016
Date of Institution	: 24-12-2016
Date of Decision	: 27-03-2019

Shri Behmi Ram s/o Shri Falkari Ram, r/o V.P.O. Aundh, Tehsil Nurpur, District Kangra, H.P.	..Petitioner.
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Versus

1. The Executive Engineer, H.P.P.W.D., Division, Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P. ..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. Naresh Kaul, Adv.
For the Respondent(s)	: Sh. Tarsem Kumar, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Sh. Behmi Ram s/o Sh. Falkari Ram, r/o V.P.O., Aundh, Tehsil Nurpur, Distt. Kangra, H.P. by the (1) Executive Engineer, H.P.P.W.D. Jawali, District Kangra, H.P., and (2) the Executive Engineer, HPPWD

Nurpur, Distt. Kangra, H.P. during the year, 1990, who had worked on daily wages as beldar and has raised his industrial dispute after more than 21 years *vide* demand notice dated nil received in the office of Labour Officer Kangra at Dharamshala on 13-6-2011, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?"

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis in the year 1987 in HPPWD Sub-Divisions-I and II, Nurpur and had worked as such till the year 1990, when his services were illegally terminated by the respondents. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the re-engaged employees as detailed in para No. 3 of the petition. The mates of the petitioner were S/Shri Harbans, Diwan Chand, Jaram Singh and Udham Singh. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were reengaged on 25-5-2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his reengagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“that the termination/retrenchment of the petitioner by the employer/opposite party be declared null and void and he be ordered to be re-engaged at that very place, from where he was retrenched alongwith all consequential benefits and other allowances and salary, besides other benefits and regularization after 10 years of service with seniority and back wages alongwith interest @18% per annum. Other relief(s) be also provided to the petitioner, as deemed fit”.

3. On notice, the respondents appeared. Only respondent No.1 filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on the grounds of delay and laches have been taken.

On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* HP Government Notification no. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from 1987 upto the year 1990. It was asserted that the petitioner had never been engaged by the respondent so the

question of completing 240 days did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondent, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondent. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, *i.e.* after about 21 years.

In these circumstances, respondent No.1 prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by respondent No.1.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24-3-2018:—

- (1) Whether termination of services of the petitioner by the respondents during year, 1990 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Behmi Ram examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19-8-1998 as Ex. PW1/B, copy of letter dated 18-12-1999 as Ex. PW1/C, copy of notice dated 4-5-2002 as Ex. PW1/D, copy of resolution dated 18-7-2002 as Ex. PW1/E, copy of UPC and registered postal receipts as Ex. PW1/F & G and copy of letter dated 18-1-2000 as Ex. PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23-7-1994 as Ex. RW1/C, copy of office order dated 29-11-2010 as Ex. RW1/D, copy of letter dated 19-8-1998 as Ex. RW1/E, copy of application dated 18-12-1999 filed by Kusum Lata as Ex. RW1/F, copy of letter dated 18-1-2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of working days chart of Smt. Kusum Lata as Ex. RW1/I & Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: No

Issue No. 3	: Yes
Issue No. 4	: Not pressed/redundant
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Behmi Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification No. PBW-(A)-A(1)17/94. He admitted that he had never worked in Jawali Division. Volunteered that, he had worked in Nurpur Division. He denied that he had not worked in Nurpur Division. He also denied that he had never worked with the respondents. Self stated that, he had worked regularly from the year 1987 upto the year 1990. He denied that he had never worked for the period from the year 1987 upto the year 1990. He further denied that he was never disengaged by the respondent/department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

12. Ex. PW1/B is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as a daily waged Store Clerk.

13. Ex. PW1/C is the copy of letter dated 18-12-1999 to the Chief Executive Engineer, HPPWD, US Club, Shimla by Smt. Kusum Lata.

14. Ex. PW1/D is the copy of letter dated 4-5-2002 regarding notice under Section 80 of CPC to The Secretary, H.P. Public Works Department, Government of Himachal Pradesh, Shimla.

15. Ex. PW1/E is the copy of letter dated 18-7-2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh.

16. Ex. PW1/F is the copy of letter/UPC dated 18-7-2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh and others.

17. Ex. PW1/G is the copy of postal receipts.

18. Ex. PW1/H is the copy of letter dated 18.1.2000 from Chief Engineer, HPPWD, Shimla to Executive Engineer, HPPWD, 9th Circle, HPPWD, Nurpur.

19. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 upto the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

20. PW3 Shri Harnam Singh stated that he was engaged in the year 1984-85 in HPPWD Division, Nurpur. After about one year, he had become a mate. He was removed by the department in the year 1990, when he had obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

21. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

22. In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29-11-2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

23. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to shift of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

24. Ex. RW1/C is the copy of Office Order dated 23-7-1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

25. Ex. RW1/D is the copy of another Office Order dated 29-11-2010 with regard to implementation of the award of this Court dated 22-12-2007.

26. Ex. RW1/E is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

27. Ex. RW1/F is the copy of letter dated 18-12-1999 regarding representation of Smt. Kusum Lata.

28. Ex. RW1/G is the copy of letter dated 18-1-2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, HP HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

29. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

30. Ex. RW1/I is the copy of working days chart of Smt. Kusum Lata working under Banikhet Sub Division HPPWD Banikhet.

31. Ex. RW1/J is the copy of working days chart of Smt. Kusum Lata working under Suliali Sub Division HPPWD Suliali.

32. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the year 1987 and that he had worked as such upto the year 1990. It was the stand taken by respondent no.1 that the petitioner had never been engaged by the department. Although, the petitioner (PW1) in his cross-examination denied the fact that he had never been engaged as a daily waged beldar in the year 1987 by the respondents and that he had not worked as such upto the year 1990, but, however, respondent No.1 has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. This mandays chart pertains to HPPWD Division Jawali. Its perusal reveals that the petitioner had not worked with respondent No.2 even for a single day from the year 1987 upto the year 1990. The petitioner in his substantive evidence also clearly admitted that he never worked in Jawali Division. No mandays chart has been proved on record by the petitioner showing him to have ever worked with respondent No.1. In view of this fact, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that there existed a relationship of employer and employee/workman in between the parties. Significantly, the petitioner neither in his pleadings, nor in his ocular evidence has stated the date on which he was engaged by respondent No.1. There is also no pleading or evidence to the effect as to on which specific date his services stood terminated by this respondent. Only the months and years of joining and termination of the petitioner stand specified in the statement of claim and his statement by way of affidavit Ex. PW1/A. Although, witnesses, namely, Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3), were examined by the petitioner in support of his case, but I find that their statements are of no help to him, as their service records were not brought on record to show that they had ever been engaged by the department. Then, it is nowhere the case of the petitioner that he had ever marked his attendance in all those four years, the period for which he claims to have worked with the respondent. Had there been any attendance register in which the petitioner had appended his signatures, he ought to have placed and exhibited on record the same so as to show that his services had been engaged by the respondents from the year 1976 upto the year 1990. But, so is not the case here. No such attendance register has seen the light of the day, nor any prayer had been made by the petitioner for the production of the same from the respondents during the pendency of this case. Further, he could have easily proved the muster rolls for the period for which he had worked. But, no such muster roll has been produced. Even no appointment letter to show that the services of the petitioner had been engaged by the respondents, has been placed on record by him.

33. From the ocular and documentary evidence of the respondent available on record, it can be gathered that the petitioner had never been appointed in any capacity at any point of time by the respondent.

34. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondent, therefore, the provisions of Section 25-F of the Act are not attracted in this case. The respondent can also not be held to have violated the provisions of Sections 25-G, 25-H and 25-N of the Act, as the relationship of the petitioner and the respondent being that of a workman and employer stands not established on record.

35. In view of the discussion and findings aforesaid, it appears to me that the avarice of the petitioner to grab government job and money had forced him to file a totally false and baseless claim. He is not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3:

36. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondent and against the petitioner.

Issue No. 4:

37. Not pressed. Even otherwise, the plea of delay and laches would have been relevant, had the petitioner been able to prove the demand notice as well as the fact of he being a workman under the respondent for the alleged period. Hence, this issue becomes redundant.

Relief:

38. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition being meritless, not maintainable and malafide, fails. It is, therefore, dismissed with costs quantified at ₹5,000/-. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	: 862/2016
Date of Institution	: 26-11-2016
Date of Decision	: 27-03-2019

Shri Kushal Ram s/o Shri Bhagat Ram, r/o Village Nagni, P.O. Bhadwar, Tehsil Nurpur, District Kangra, H.P. ..Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D., Division, Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P. ..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. Naresh Kaul, Adv.
For the Respondent(s)	: Sh. Tarsem Kumar, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Shri Kushal Ram s/o Shri Bhagat Ram, r/o Village Nagni, P.O. Bhadwar, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (i) The Executive Engineer, H.P.P.W.D., Division Nurpur, District Kangra, H.P., (ii) The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after more than 22 years *vide* demand notice dated nil received in the Labour Office Dharamshala on 04-03-2013, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of more than 22 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis in the year 1986 in HPPWD Sub Divisions-I and II, Nurpur and had worked as such till the year 1990, when his services were illegally terminated by the respondents. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the re-engaged employees as detailed in para No.3 of the petition. The mates of the petitioner were S/Shri Prem Singh, Swarn Lal, Rodu Ram and Bishamber. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were reengaged on 25-5-2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his re-engagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“that the termination/retrenchment of the petitioner by the employer/opposite party be declared null and void and he be ordered to be re-engaged at that very place, from where he was retrenched alongwith all consequential benefits and other allowances and salary, besides other benefits and regularization after 10 years of service with seniority and back wages alongwith interest @18% per annum. Other relief(s) be also provided to the petitioner, as deemed fit”.

3. On notice, the respondents appeared. Only respondent No.1 filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on the grounds of delay and laches have been taken.

On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from 1986 upto the year 1990. It was asserted that the petitioner had never been engaged by the respondent so the question of completing 240 days did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondent, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondent. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, *i.e.* after about 21 years.

In these circumstances, respondent No.1 prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by respondent No.1.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24-3-2018:—

- (1) Whether termination of services of the petitioner by the respondents during year, 1990 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Kushal Ram examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19-8-1998 as Ex. PW1/B, copy of letter dated 18-12-1999 as Ex. PW1/C, copy of notice dated 4-5-2002 as Ex. PW1/D, copy of resolution dated 18-7-2002 as Ex. PW1/E, copy of UPC and registered postal receipts as Ex. PW1/F & G and copy of letter dated 18-1-2000 as Ex. PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23-7-1994 as Ex. RW1/C, copy of office order dated 29-11-2010 as Ex. RW1/D, copy of letter dated 19-8-1998 as Ex. RW1/E, copy of application dated 18-12-1999 filed by Kusum Lata as Ex. RW1/F, copy of letter dated

18-1-2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of working days chart of Smt. Kusum Lata as Ex. RW1/I & Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Yes
Issue No. 4	: Not pressed/redundant
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Kushal Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification No. PBW-(A)-A(1)17/94. He admitted that he had never worked in Jawali Division. Volunteered that, he had worked in Nurpur Division. He denied that he had not worked in Nurpur Division. He also denied that he had never worked with the respondents. Self stated that, he had worked regularly from the year 1986 upto the year 1990. He denied that he had never worked for the period from the year 1986 upto the year 1990. He further denied that he was never disengaged by the respondent/department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

12. Ex. PW1/B is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as a daily waged Store Clerk.

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18. Ex. PW1/H is the copy of letter dated 18-1-2000 from Chief Engineer, HPPWD, Shimla to Executive Engineer, HPPWD, 9th Circle, HPPWD, Nurpur.

19. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 upto the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

20. PW3 Shri Harnam Singh stated that he was engaged in the year 1984-85 in HPPWD Division, Nurpur. After about one year, he had become a mate. He was removed by the department in the year 1990, when he had obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

21. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

22. In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29-11-2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

23. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to shift of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

24. Ex. RW1/C is the copy of Office Order dated 23-7-1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

25. Ex. RW1/D is the copy of another Office Order dated 29-11-2010 with regard to implementation of the award of this Court dated 22-12-2007.

26. Ex. RW1/E is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

27. Ex. RW1/F is the copy of letter dated 18-12-1999 regarding representation of Smt. Kusum Lata.

28. Ex. RW1/G is the copy of letter dated 18-1-2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, HP HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

29. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

30. Ex. RW1/I is the copy of working days chart of Smt. Kusum Lata working under Banikhet Sub-Division HPPWD Banikhet.

31. Ex. RW1/J is the copy of working days chart of Smt. Kusum Lata working under Suliali Sub-Division HPPWD Suliali.

32. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the year 1986 and that he had worked as such upto the year 1990. It was the stand taken by respondent No.1 that the petitioner had never been engaged by the department. Although, the petitioner (PW1) in his cross-examination denied the fact that he had never been engaged as a daily waged beldar in the year 1986 by the respondents and that he had not worked as such upto the year 1990, but, however, respondent No.1 has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. This mandays chart pertains to HPPWD Division Jawali. Its perusal reveals that the petitioner had not worked with respondent No. 2 even for a single day from the year 1986 upto the year 1990. The petitioner in his substantive evidence also clearly admitted that he never worked in Jawali Division. No mandays chart has been proved on record by the petitioner showing him to have ever worked with respondent No.1. In view of this fact, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that there existed a relationship of employer and employee/workman in between the parties. Significantly, the petitioner neither in his pleadings, nor in his ocular evidence has stated the date on which he was engaged by respondent No.1. There is also no pleading or evidence to the effect as to on which specific date his services stood terminated by this respondent. Only the months and years of joining and termination of the petitioner stand specified in the statement of claim and his statement by way of affidavit Ex. PW1/A. Although, witnesses, namely, Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3), were examined by the petitioner in support of his case, but I find that their statements are of no help to him, as their service records were not brought on record to show that they had ever been engaged by the department. Then, it is nowhere the case of the petitioner that he had ever marked his attendance in all those five years, the period for which he claims to have worked with the respondent. Had there been any attendance register in which the petitioner had appended his signatures, he ought to have placed and exhibited on record the same so as to show that his services had been engaged by the respondents from the year 1986 upto the year 1990. But, so is not the case here. No such attendance register has seen the light of the day, nor any prayer had been made by the petitioner for the production of the same from the respondents during the pendency of this case. Further, he could have easily proved the muster rolls for the period for which he had worked. But, no such muster roll has been produced. Even no appointment letter to show that the services of the petitioner had been engaged by the respondents, has been placed on record by him.

33. From the ocular and documentary evidence of respondent No. available on record, it can be gathered that the petitioner had never been appointed in any capacity at any point of time by the respondents.

34. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondents, therefore, the provisions of Section 25-F of the Act are not attracted in this case. The respondents can also not be held to have violated the provisions of Sections 25-G, 25-H and 25-N of the Act, as the relationship of the petitioner and the respondents being that of a workman and employer stands not established on record.

35 In view of the discussion and findings aforesaid, it appears to me that the avarice of the petitioner to grab government job and money had forced him to file a totally false and baseless claim. He is not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

36. Taking into account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4:

37. Not pressed. Even otherwise, the plea of delay and laches would have been relevant, had the petitioner been able to prove the demand notice as well as the fact of he being a workman under the respondents for the alleged period. Hence, this issue becomes redundant.

Relief:

38. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition being meritless, not maintainable and malafide, fails. It is, therefore, dismissed with costs quantified at ₹ 5,000/-. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No.	: 814/2016
Date of Institution	: 24-11-2016
Date of Decision	: 28-03-2019

Shri Ramesh Chand s/o Shri Beli Ram, r/o Village Kopra Tikka Meti, P.O. Kopra, Tehsil Nurpur, District Kangra, H.P. ..Petitioner.

Versus

1. The Executive Engineer, Nurpur Division, H.P.P.W.D. Nurpur, District Kangra, H.P.
2. The Executive Engineer, Jawali Division, H.P.P.W.D. Jawali, District Kangra, H.P.

*..Respondents.***Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner	: Sh. Naresh Kaul, Adv.
For the Respondent(s)	: Sh. Tarsem Kumar, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Shri Ramesh Chand s/o Shri Beli Ram, r/o Village Kopra Tikka Meti, P.O. Kopra, Tehsil Nurpur, District Kangra, H.P. during 1990 by (i) The Executive Engineer, Nurpur Division, HPPWD, Nurpur, District Kangra, H.P., (ii) The Executive Engineer, Jawali Division, HPPWD. Jawali, District Kangra, H.P., who had worked on daily wages basis as beldar and has raised his industrial dispute after about 23 years *vide* demand notice dated nil received in the office of Labour Officer Dharamshala 04-03-2013 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of about 23 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis in the year 1985 in HPPWD Sub-Divisions-I and II, Nurpur and had worked as such till the year 1990, when his services were illegally terminated by the respondents. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the re-engaged employees as detailed in para No. 3 of the petition. The mates of the petitioner were S/Shri Mohinder Singh and Kewal. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were re-engaged on 25-5-2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his re-engagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“that the termination/retrenchment of the petitioner by the employer/opposite party be declared null and void and he be ordered to be re-engaged at that very place, from where he was retrenched alongwith all consequential benefits and other allowances and salary, besides other benefits and regularization after 10 years of service with seniority and back wages alongwith interest @18% per annum. Other relief(s) be also provided to the petitioner, as deemed fit”.

3. On notice, the respondents appeared. Only respondent No.1 filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on the grounds of delay and laches have been taken.

On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from the year 1985 upto the year 1990. It was asserted that the petitioner had never been engaged by the respondent so the question of completing 240 days did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondent, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondent. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, i.e. after about 21 years.

In these circumstances, respondent No.1 prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by respondent No.1.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24-3-2018:—

- (1) Whether termination of services of the petitioner by the respondents during year, 1990 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Ramesh Chand examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3) as his witnesses. Besides

this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19-8-1998 as Ex. PW1/B, copy of letter dated 18-12-1999 as Ex. PW1/C, copy of notice dated 4-5-2002 as Ex. PW1/D, copy of resolution dated 18-7-2002 as Ex. PW1/E, copy of UPC and registered postal receipts as Ex. PW1/F & G and copy of letter dated 18-1-2000 as Ex. PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23-7-1994 as Ex. RW1/C, copy of office order dated 29-11-2010 as Ex. RW1/D, copy of letter dated 19-8-1998 as Ex. RW1/E, copy of application dated 18-12-1999 filed by Kusum Lata as Ex. RW1/F, copy of letter dated 18-1-2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of working days chart of Smt. Kusum Lata as Ex. RW1/I & Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Yes
Issue No. 4	: Not pressed/redundant
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Ramesh Chand (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification No. PBW-(A)-A(1)17/94. He admitted that he had never worked in Jawali Division. Volunteered that, he had worked in Nurpur Division. He denied that he had not worked in Nurpur Division. He also denied that he had never worked with the respondents. Self stated that, he had worked regularly from the year 1985 upto the year 1990. He denied that he had never worked for the period from the year 1985 upto the year 1990. He further denied that he was never disengaged by the respondent/department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

12. Ex. PW1/B is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as a daily waged Store Clerk.

13. Ex. PW1/C is the copy of letter dated 18-12-1999 to the Chief Executive Engineer, HPPWD, US Club, Shimla by Smt. Kusum Lata.

14. Ex. PW1/D is the copy of letter dated 4-5-2002 regarding notice under Section 80 of CPC to The Secretary, H.P. Public Works Department, Government of Himachal Pradesh, Shimla.

15. Ex. PW1/E is the copy of letter dated 18-7-2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh.

16. Ex. PW1/F is the copy of letter/UPC dated 18-7-2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh and others.

17. Ex. PW1/G is the copy of postal receipts.

18. Ex. PW1/H is the copy of letter dated 18-1-2000 from Chief Engineer, HPPWD, Shimla to Executive Engineer, HPPWD, 9th Circle, HPPWD, Nurpur.

19. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 upto the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

20. PW3 Shri Harnam Singh stated that he was engaged in the year 1984-85 in HPPWD Division, Nurpur. After about one year, he had become a mate. He was removed by the department in the year 1990, when he had obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

21. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

22. In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29-11-2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

23. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to shift of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

24. Ex. RW1/C is the copy of Office Order dated 23-7-1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

25. Ex. RW1/D is the copy of another Office Order dated 29-11-2010 with regard to implementation of the award of this Court dated 22-12-2007.

26. Ex. RW1/E is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

27. Ex. RW1/F is the copy of letter dated 18-12-1999 regarding representation of Smt. Kusum Lata.

28. Ex. RW1/G is the copy of letter dated 18-1-2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, H.P. HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

29. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

30. Ex. RW1/I is the copy of working days chart of Smt. Kusum Lata working under Banikhet Sub-Division HPPWD Banikhet.

31. Ex. RW1/J is the copy of working days chart of Smt. Kusum Lata working under Suliali Sub Division HPPWD Suliali.

32. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the year 1985 and that he had worked as such upto the year 1990. It was the stand taken by respondent No.1 that the petitioner had never been engaged by the department. Although, the petitioner (PW1) in his cross-examination denied the fact that he had never been engaged as a daily waged beldar in the year 1985 by the respondents and that he had not worked as such upto the year 1990, but, however, respondent No.1 has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. This mandays chart pertains to HPPWD Division Jawali. Its perusal reveals that the petitioner had not worked with respondent No. 2 even for a single day from the year 1985 upto the year 1990. The petitioner in his substantive evidence also clearly admitted that he never worked in Jawali Division. No mandays chart has been proved on record by the petitioner showing him to have ever worked with respondent No.1. In view of this fact, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that there existed a relationship of employer and employee/workman in between the parties. Significantly, the petitioner neither in his pleadings, nor in his ocular evidence has stated the date on which he was engaged by respondent no.1. There is also no pleading or evidence to the effect as to on which specific date his services stood terminated by this respondent. Only the months and years of joining and termination of the petitioner stand specified in the statement of claim and his statement by way of affidavit Ex. PW1/A. Although, witnesses, namely, Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3), were examined by the petitioner in support of his case, but I find that their statements are of no help to him, as their service records were not brought on record to show that they had ever been engaged by the department. Then, it is nowhere the case of the petitioner that he had ever marked his attendance in all those six years, the period for which he claims to have worked with the respondent. Had there been any attendance register in which the petitioner had appended his signatures, he ought to have placed and exhibited on record the same so as to show that his

services had been engaged by the respondent from the year 1985 upto the year 1990. But, so is not the case here. No such attendance register has seen the light of the day, nor any prayer had been made by the petitioner for the production of the same from the respondents during the pendency of this case. Further, he could have easily proved the muster rolls for the period for which he had worked. But, no such muster roll has been produced. Even no appointment letter to show that the services of the petitioner had been engaged by the respondents, has been placed on record by him.

33. From the ocular and documentary evidence of respondent No.1 available on record, it can be gathered that the petitioner had never been appointed in any capacity at any point of time by the respondents.

34. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondents, therefore, the provisions of Section 25-F of the Act are not attracted in this case. The respondents can also not be held to have violated the provisions of Sections 25-G, 25-H and 25-N of the Act, as the relationship of the petitioner and the respondents being that of a workman and employer stands not established on record.

35. In view of the discussion and findings aforesaid, it appears to me that the avarice of the petitioner to grab government job and money had forced him to file a totally false and baseless claim. He is not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

36. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4:

37. Not pressed. Even otherwise, the plea of delay and laches would have been relevant, had the petitioner been able to prove the demand notice as well as the fact of he being a workman under the respondents for the alleged period. Hence, this issue becomes redundant.

Relief:

38. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition being meritless, not maintainable and malafide, fails. It is, therefore, dismissed with costs quantified at ₹ 5,000/-. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 895/2016
Date of Institution : 24-12-2016
Date of Decision : 28-03-2019

Shri Pawan Kumar s/o Shri Nikka Ram, r/o Village and Post Office Aund, Tehsil Nurpur, District Kangra, H.P. ..Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P. ..Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.
For the Respondent(s) : Sh. Tarsem Kumar, A.D.A.
AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Sh. Pawan Kumar s/o Sh. Nikka Ram, r/o Village and Post Office Aund, Tehsil Nurpur, District Kangra, H.P. by the (1) Executive Engineer, H.P.P.W.D. Jawali, District Kangra, H.P., and (2) the Executive Engineer, HPPWD Nurpur, Distt. Kangra, H.P. during the year, 1990, who had worked on daily wages as beldar and has raised his industrial dispute after more than 22 years *vide* demand notice dated nil received in the office of Labour Officer Kangra at Dharamshala on 4-3-2013, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of about 22 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis in the year 1980 in HPPWD Sub-Divisions-I and II, Nurpur and had worked as such till the year 1990, when his services were illegally terminated by the respondents. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the reengaged employees as detailed in para No. 3 of the petition. The mates of the petitioner were S/Shri Pritam, Kushal and Chain Singh. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were reengaged on 25-5-2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from

the side of the department, the petitioner had communicated in writing for his re-engagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“that the termination/retrenchment of the petitioner by the employer/opposite party be declared null and void and he be ordered to be re-engaged at that very place, from where he was retrenched alongwith all consequential benefits and other allowances and salary, besides other benefits and regularization after 10 years of service with seniority and back wages alongwith interest @18% per annum. Other relief(s) be also provided to the petitioner, as deemed fit”

3. On notice, the respondents appeared. Only respondent No.1 filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on the grounds of delay and laches have been taken.

On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from the year 1980 upto the year 1990. It was asserted that the petitioner had never been engaged by the respondent so the question of completing 240 days did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondent, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondent. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, *i.e.* after about 21 years.

In these circumstances, respondent No.1 prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by respondent No.1.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24-3-2018:—

- (1) Whether termination of services of the petitioner by the respondents during year, 1990 is/was illegal and unjustified as alleged? ..OPP.
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? OPP.
- (3) Whether the claim petition is not maintainable in the present form? ..OPR.

- (4) Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? ..OPR.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Pawan Kumar examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19-8-1998 as Ex. PW1/B, copy of letter dated 18-12-1999 as Ex. PW1/C, copy of notice dated 4-5-2002 as Ex. PW1/D, copy of resolution dated 18-7-2002 as Ex. PW1/E, copy of UPC and registered postal receipts as Ex. PW1/F & G and copy of letter dated 18-1-2000 as Ex. PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23-7-1994 as Ex. RW1/C, copy of office order dated 29-11-2010 as Ex. RW1/D, copy of letter dated 19-8-1998 as Ex. RW1/E, copy of application dated 18-12-1999 filed by Kusum Lata as Ex. RW1/F, copy of letter dated 18-1-2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of working days chart of Smt. Kusum Lata as Ex. RW1/I & Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Yes
Issue No. 4	: Not pressed/redundant
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Pawan Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification No. PBW-(A)-A(1)17/94. He admitted that he had never worked in Jawali Division. Volunteered that, he had worked in Nurpur Division. He denied that he had not worked in Nurpur Division. He also denied that he had never worked with the respondents. Self stated that, he had worked regularly from the year 1980 upto the year 1990. He denied that he had never worked for the period from the year 1980 upto the year 1990. He further denied that he was never disengaged by the respondent/department. It was also denied by him that no juniors to

him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is availabl.

12. Ex. PW1/B is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as a daily waged Store Clerk.

13. Ex. PW1/C is the copy of letter dated 18-12-1999 to the Chief Executive Engineer, HPPWD, US Club, Shimla by Smt. Kusum Lata.

14. Ex. PW1/D is the copy of letter dated 4-5-2002 regarding notice under Section 80 of CPC to The Secretary, H.P. Public Works Department, Government of Himachal Pradesh, Shimla.

15. Ex. PW1/E is the copy of letter dated 18-7-2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh.

16. Ex. PW1/F is the copy of letter/UPC dated 18-7-2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh and others.

17. Ex. PW1/G is the copy of postal receipts.

18. Ex. PW1/H is the copy of letter dated 18-1-2000 from Chief Engineer, HPPWD, Shimla to Executive Engineer, HPPWD, 9th Circle, HPPWD, Nurpur.

19. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 uptil the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

20. PW3 Shri Harnam Singh stated that he was engaged in the year 1984-85 in HPPWD Division, Nurpur. After about one year, he had become a mate. He was removed by the department in the year 1990, when he had obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

21. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

22. In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD

Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29-11-2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

23. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to shift of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

24. Ex. RW1/C is the copy of Office Order dated 23-7-1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

25. Ex. RW1/D is the copy of another Office Order dated 29-11-2010 with regard to implementation of the award of this Court dated 22-12-2007.

26. Ex. RW1/E is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

27. Ex. RW1/F is the copy of letter dated 18-12-1999 regarding representation of Smt. Kusum Lata.

28. Ex. RW1/G is the copy of letter dated 18-1-2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, H.P. HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

29. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

30. Ex. RW1/I is the copy of working days chart of Smt. Kusum Lata working under Banikhet Sub-Division HPPWD Banikhet.

31. Ex. RW1/J is the copy of working days chart of Smt. Kusum Lata working under Suliali Sub-Division HPPWD Suliali.

32. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the year 1980 and that he had worked as such upto the year 1990. It was the stand taken by respondent no.1 that the petitioner had never been engaged by the department. Although, the petitioner (PW1) in his cross-examination denied the fact that he had never been engaged as a daily waged beldar in the year 1980 by the respondents and that he had not worked as such upto the year 1990, but, however, respondent No.1 has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. This mandays chart pertains to HPPWD Division Jawali. Its perusal reveals that the petitioner had not worked with respondent No. 2 even for a single day from the year 1980 upto the year 1990. The petitioner in his substantive evidence also clearly admitted that he never worked in Jawali Division. No mandays chart has been proved on record by the petitioner showing him to have ever worked with respondent No.1. In view of this fact, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that there existed a relationship of employer and employee/workman in between the parties. Significantly, the petitioner neither in his pleadings, nor in his ocular evidence has stated the date on which he was engaged by respondent No.1. There is also no pleading or evidence to the effect as to on which specific date his services stood terminated by this respondent. Only the months and years of joining and termination of the petitioner stand specified in the statement of claim and his statement by way of affidavit Ex. PW1/A. Although, witnesses, namely, Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3),

were examined by the petitioner in support of his case, but I find that their statements are of no help to him, as their service records were not brought on record to show that they had ever been engaged by the department. Then, it is nowhere the case of the petitioner that he had ever marked his attendance in all those eleven years, the period for which he claims to have worked with the respondent. Had there been any attendance register in which the petitioner had appended his signatures, he ought to have placed and exhibited on record the same so as to show that his services had been engaged by the respondent from the year 1980 upto the year 1990. But, so is not the case here. No such attendance register has seen the light of the day, nor any prayer had been made by the petitioner for the production of the same from the respondents during the pendency of this case. Further, he could have easily proved the muster rolls for the period for which he had worked. But, no such muster roll has been produced. Even no appointment letter to show that the services of the petitioner had been engaged by the respondents, has been placed on record by him.

33. From the ocular and documentary evidence of respondent No.1 available on record, it can be gathered that the petitioner had never been appointed in any capacity at any point of time by the respondents.

34. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondents, therefore, the provisions of Section 25-F of the Act are not attracted in this case. The respondents can also not be held to have violated the provisions of Sections 25-G, 25-H and 25-N of the Act, as the relationship of the petitioner and the respondents being that of a workman and employer stands not established on record.

35. In view of the discussion and findings aforesaid, it appears to me that the avarice of the petitioner to grab government job and money had forced him to file a totally false and baseless claim. He is not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

36. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4:

37. Not pressed. Even otherwise, the plea of delay and laches would have been relevant, had the petitioner been able to prove the demand notice as well as the fact of he being a workman under the respondents for the alleged period. Hence, this issue becomes redundant.

Relief:

38. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition being meritless, not maintainable and malafide, fails. It is, therefore, dismissed with costs quantified at `5,000/-. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 860/2016
Date of Institution : 26-11-2016
Date of Decision : 28-03-2019

Shri Kartar Singh s/o Shri Pritam Singh, r/o V.P.O. Khwada, Tehsil Nurpur, District Kangra, H.P. *..Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D. Division Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. *..Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Naresh Kaul, Adv.
For the Respondent(s) : Sh. Tarsem Kumar, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Shri Kartar Singh s/o Shri Pritam Singh, r/o V.P.O. Khwada, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (i) The Executive Engineer, H.P.P.W.D., Division Nurpur, District Kangra, H.P., (ii) The Executive Engineer, H.P.P.W.D., Division Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after more than 23 years *vide* demand notice dated nil received in the Labour Office Dharamshala on 04-03-2013, without complying the provisions of the Industrial Dispute Act, 1947, is legal and justified? If not, keeping in view delay of more than 23 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis in the year 1984 in HPPWD Sub-Divisions-I and II, Nurpur and had worked as such till the year 1990, when his services were illegally terminated by the respondents. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with

the re-engaged employees as detailed in para No. 3 of the petition. The mates of the petitioner were S/Shri Diwan Chand and Nihal Chand. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were re-engaged on 25-5-2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his re-engagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“that the termination/retrenchment of the petitioner by the employer/opposite party be declared null and void and he be ordered to be re-engaged at that very place, from where he was retrenched alongwith all consequential benefits and other allowances and salary, besides other benefits and regularization after 10 years of service with seniority and back wages alongwith interest @18% per annum. Other relief(s) be also provided to the petitioner, as deemed fit”.

3. On notice, the respondents appeared. Only respondent No.1 filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on the grounds of delay and laches have been taken.

On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from the year 1984 upto the year 1990. It was asserted that the petitioner had never been engaged by the respondent so the question of completing 240 days did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondent, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondent. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, *i.e.* after about 21 years.

In these circumstances, respondent No.1 prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by respondent No.1.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24-3-2018:—

- (1) Whether termination of services of the petitioner by the respondents during year, 1990 is/was illegal and unjustified as alleged? ..*OPP*.
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR*.
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? ..*OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Kartar Singh examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19-8-1998 as Ex. PW1/B, copy of letter dated 18-12-1999 as Ex. PW1/C, copy of notice dated 4-5-2002 as Ex. PW1/D, copy of resolution dated 18-7-2002 as Ex. PW1/E, copy of UPC and registered postal receipts as Ex. PW1/F & G and copy of letter dated 18-1-2000 as Ex. PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23-7-1994 as Ex. RW1/C, copy of office order dated 29-11-2010 as Ex. RW1/D, copy of letter dated 19-8-1998 as Ex. RW1/E, copy of application dated 18-12-1999 filed by Kusum Lata as Ex. RW1/F, copy of letter dated 18-1-2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of working days chart of Smt. Kusum Lata as Ex. RW1/I & Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Yes
Issue No. 4	: Not pressed/redundant
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Kartar Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* Government notification No.PBW-(A)-A(1)17/94. He admitted that he had never worked in Jawali Division. Volunteered that, he had worked in Nurpur Division. He denied that he had not worked in Nurpur Division. He also denied that he had never worked with the respondents. Self stated that, he had worked regularly from the year 1984 upto the year 1990. He denied that he had never worked for the period from the year 1984 upto the year 1990. He further denied that he was never disengaged by the respondent/department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

12. Ex. PW1/B is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as a daily waged Store Clerk.

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18. Ex. PW1/H is the copy of letter dated 18-1-2000 from Chief Engineer, HPPWD, Shimla to Executive Engineer, HPPWD, 9th Circle, HPPWD, Nurpur.

19. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 upto the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

20. PW3 Shri Harnam Singh stated that he was engaged in the year 1984-85 in HPPWD Division, Nurpur. After about one year, he had become a mate. He was removed by the department in the year 1990, when he had obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

21. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

22. In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29-11-2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

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25. Ex. RW1/D is the copy of another Office Order dated 29-11-2010 with regard to implementation of the award of this Court dated 22-12-2007.

26. Ex. RW1/E is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

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29. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

30. Ex. RW1/I is the copy of working days chart of Smt. Kusum Lata working under Banikhet Sub Division HPPWD Banikhet.

31. Ex. RW1/J is the copy of working days chart of Smt. Kusum Lata working under Suliali Sub-Division HPPWD Suliali.

32. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the year 1984 and that he had worked as such upto the year 1990. It was the stand taken by respondent No. 1 that the petitioner had never been engaged by the department. Although, the petitioner (PW1) in his cross-examination denied the fact that he had never been engaged as a daily waged beldar in the year 1984 by the respondents and that he had not worked as such upto the year 1990, but, however, respondent No.1 has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. This mandays chart pertains to HPPWD Division Jawali. Its perusal reveals that the petitioner had not worked with respondent No. 2 even for a single day from the year 1984 upto the year 1990. The petitioner in his substantive evidence also clearly admitted that he never worked in Jawali Division. No mandays chart has been proved on record by the petitioner showing him to have ever worked with respondent No. 1. In view of this fact, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that there existed a relationship of employer and employee/workman in between the parties. Significantly, the petitioner neither in his pleadings,

nor in his ocular evidence has stated the date on which he was engaged by respondent No.1. There is also no pleading or evidence to the effect as to on which specific date his services stood terminated by this respondent. Only the months and years of joining and termination of the petitioner stand specified in the statement of claim and his statement by way of affidavit Ex. PW1/A. Although, witnesses, namely, Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3), were examined by the petitioner in support of his case, but I find that their statements are of no help to him, as their service records were not brought on record to show that they had ever been engaged by the department. Then, it is nowhere the case of the petitioner that he had ever marked his attendance in all those seven years, the period for which he claims to have worked with the respondent. Had there been any attendance register in which the petitioner had appended his signatures, he ought to have placed and exhibited on record the same so as to show that his services had been engaged by the respondent from the year 1984 upto the year 1990. But, so is not the case here. No such attendance register has seen the light of the day, nor any prayer had been made by the petitioner for the production of the same from the respondents during the pendency of this case. Further, he could have easily proved the muster rolls for the period for which he had worked. But, no such muster roll has been produced. Even no appointment letter to show that the services of the petitioner had been engaged by the respondents, has been placed on record by him.

33. From the ocular and documentary evidence of respondent No.1 available on record, it can be gathered that the petitioner had never been appointed in any capacity at any point of time by the respondents.

34. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondents, therefore, the provisions of Section 25-F of the Act are not attracted in this case. The respondents can also not be held to have violated the provisions of Sections 25-G, 25-H and 25-N of the Act, as the relationship of the petitioner and the respondents being that of a workman and employer stands not established on record.

35. In view of the discussion and findings aforesaid, it appears to me that the avarice of the petitioner to grab government job and money had forced him to file a totally false and baseless claim. He is not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

36. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4:

37. Not pressed. Even otherwise, the plea of delay and laches would have been relevant, had the petitioner been able to prove the demand notice as well as the fact of he being a workman under the respondents for the alleged period. Hence, this issue becomes redundant.

Relief:

38. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition being meritless, not maintainable and malafide, fails. It is,

therefore, dismissed with costs quantified at ` 5,000/-. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 268/2015
Date of Institution : 08-7-2015
Date of Decision : 28-03-2019

Shri Narpat Ram s/o Shri Parma Ram, r/o Village Doh, P.O. Rewalsar, Tehsil Sadar, District Mandi, H.P. *..Petitioner.*

Versus

The Divisional Forest Officer, Mandi Forest Division, District Mandi, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Sh. Naveen Chander, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether time to time termination of the services of Shri Narpat Ram s/o Shri Parma Ram, r/o Village Doh, P.O. Rewalsar, Tehsil Sadar, District Mandi, H.P. by the Divisional Forest Officer, Mandi Forest Division, District Mandi, H.P. during April, 2000 to October, 2013 and finally during November, 2013, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner, as set out in the statement of claim is that his services were engaged as a daily waged forest worker by the respondent on muster roll basis in the year 1994-95. He had worked under the Range Forest Officer, Mandi at Beat Rewalsar upto October, 2013. During this period his services had been engaged on muster rolls and also on bill vouchers. No appointment letter in writing had been given to him at the time of his appointment. Work and funds were available with the department throughout the year in Range Officer, Mandi, but his

services were terminated from time to time by giving him fictional breaks from the year 1994-95 to October, 2013. Such breaks were given so that the petitioner could not complete 240 days in each calendar year. The petitioner had approached the respondent time and again not give him fictional breaks, but without success. His service condition had been changed time and again by the department, as some times he was issued muster rolls and at times was given payment on bill vouchers. Persons junior to him were continuously retained in service by the respondent. Shri Parma Ram s/o Shri Ram Lal, who was junior to the petitioner was continuously retained in service by the respondent. His services were finally terminated orally by the respondent in November, 2013. Neither any notice nor retrenchment compensation was given to him. His termination was null and void *ab-initio* and the respondent had violated the principle of natural justice. The act and conduct of the respondent is highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). It also amounts to unfair labour practice.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

- “(i) that the illegal termination/fictional breaks for the period from 1994-95 to October, 2013 be set aside and the respondent be directed to condone the said break period in continuity of his service for the purpose of seniority and to pay him wages for the break periods.
- (ii) his final termination order *w.e.f.* November, 2013 be set aside and the respondent be directed to reinstate his services with full back wages, seniority and continuity of service from the date of his termination till his reengagement.
- (iii) the respondent be directed to regularize his services after completion of 8 years in service or from the date when his junior was regularized in pay scale 4900—10680 and to pay the arrears from the due date with all consequential service benefits throughout.
- (iv) the respondent be directed to fix the name of the petitioner in the cadre seniority list above his junior and to pay Rs.10,000/- as litigation costs.
- (v) any other relief as deemed fit by the Court be granted to him”.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objection has been taken to the effect that no legal and fundamental right of the petitioner has been infringed by the respondent, so the petition was not maintainable.

On merits, it has been asserted that the petitioner was initially engaged as a casual labourer in the year 1999 and not in the year 1994-95. He was engaged to do seasonal forestry works in the department in Mandi Range. There is no provisions for issuing appointment letter to a daily waged labourer. The services of the petitioner had never been disengaged by the respondent. He had worked with the department intermittently. At the time of his engagement in the year 1999, the petitioner had been apprised by the field staff that the respondent shall not be in a position to provide him work for the whole year. His services were to be coterminous with the closure of the season. Only after his consent, the petitioner was engaged for seasonal activities in the department, *i.e.* plantation, fencing, fire season etc. It is denied that the petitioner had not been allowed by the respondent to complete 240 days in each calendar year. Infact, he had not completed such days in any calendar year. He had never been terminated in the year 2013. He is still working with

the department. No fictional breaks had ever been given to the petitioner. He being an intermittent worker had been reporting at the works of his own free will and convenience. Daily waged labourers are being engaged on bill basis in compliance of the directions issued by the Financial Commissioner-cum-Secretary Forests to the government of Himachal Pradesh. It is claimed that as the forest works are seasonal in nature, the labour is required intermittently and not regularly for the whole year. The work is provided as per the availability of work and funds. Service of a casual labour is utilized as per the availability of work and funds, on the basis of the principle of 'first come last go'. The dispute has been raised by the petitioner at a much belated stage. Shri Parma Ram had never been engaged on work or retained continuously in the Mandi Forest Division. No junior worker is working with the respondent. The work is being provided to the petitioner, as and when available.

In these circumstances, the respondent prayed that the petition in hand be dismissed.

4. In the rejoinder, the petitioner reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 01-4-2016:—

- (1) Whether time to time termination of the services of petitioner during April, 2000 to October, 2013 by the respondent is illegal and unjustified as alleged? .. *OPP*.
- (2) Whether final termination of services of the petitioner by the respondent during November, 2013 is illegal and unjustified as alleged? ..*OPP*.
- (3) If issue No. 1 & issue No. 2 are proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (4) Whether the present claim petition/reference is not maintainable in the present form as alleged? ..*OPR*.

Relief

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Narpat Ram appeared as PW1 and tendered in evidence his statement by way of affidavit as Ex. PW1/A, copy of seniority list as Ex. PW1/B, copy of RTI information dated 18-1-2017 as Ex. PW1/C. The respondent examined one Shri S.S. Kashyap as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of mandays chart as Ex. RW1/B, copy of letter dated 25-9-2001 as Ex. RW1/C and copy of seniority list of daily wagers as Ex. RW1/D.

7. Arguments of the learned Authorized Representative for the petitioner and learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: Decided accordingly
Issue No. 2	: Decided accordingly
Issue No. 3	: Decided accordingly

Issue No. 4	: Decided accordingly
Relief	: Petition is partly allowed per operative part of the award.

REASONS FOR FINDINGS

Issues No. 1 to 4

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Narpat Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he works as an agriculturist. He owns some land. He admitted that he had also worked with the department after the year 2013. Denied that he had been kept at work in January, 1999. Volunteered that, he had been working since the year 1994. He denied that he had never worked with the department from the year 1994 upto December, 1998. He also denied that neither he had been removed, nor had been given fictional breaks by the department. He further denied that he had been told by the department that as and when the seasonal work was available, he would be informed. He denied that he never worked for 240 days or more in any year. It was also denied by him that in between he had been reporting at work of his own. He also denied that Shri Parma Ram had never worked with the department. He categorically denied that no worker junior to him had been kept at work by the respondent.

11. Ex. PW1/B is the seniority list of daily waged workers *w.e.f.* January, 1997 to December, 2006.

12. Ex. PW1/C is the copy of letter dated 18-1-2017 regarding information under RTI Act.

13. Ex. PX is the copy of seniority list of forest worker as it stood on 1-1-2017, Mandi Forest Division, Mandi.

14. Conversely, Shri S.S. Kashyap, Divisional Forest Officer, Mandi (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the department had kept the petitioner at work in the year 1994-1995. Volunteered that, he had been kept in the year 1999. He admitted that no appointment letter is issued at the time of engagement of daily wagger on muster rolls or bill basis. He was categorical that no notification has been issued by the department showing the forest department as a seasonal industry. He denied that the department had intentionally given fictional breaks to the petitioner so that he could not complete 240 days in each year. He admitted that Ex. PW1/B had been issued by the department, showing the names of 13 workers, who had been engaged from time to time by the department. Self stated that, it was as per availability of work, being seasonal. He clearly admitted that daily wagers mentioned in Ex. RW1/D were given more than 240 days of work by the department. Volunteered that, they were given the work as per the availability of work. He denied that a junior had been continuously kept at work by the department. As per Ex. RW1/D, some people had been regularized. He clearly admitted that seniority list Ex. PX had been issued by the department. As per this seniority list many persons are junior to the petitioner.

15. Ex. RW1/B is the copy of the mandays chart relating to the petitioner.

16. Ex. RW1/C is a copy of letter dated 20-10-2001 from Principal Chief Conservator of Forests, Himachal Pradesh regarding the execution of various works.

17. Ex. RW1/D is the copy of seniority list of daily wager Mandi Forest Division, Mandi, who had completed 240 days in each calendar year and were working continuously.

18. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. The mandays chart Ex. RW1/B unfolds that the petitioner was initially employed in the month of January, 1999 by the respondent. Although, the petitioner has claimed that his services were engaged as a daily wager by the respondent in the year 1994, but he has not placed on record any document in this regard.

19. The mandays chart Ex. RW1/B clarifies that the month of initial engagement of the petitioner is January, 1999. Placed on record by the petitioner is a copy of seniority list of forest workers of Mandi Forest Division, as it stood on 1-1-2017 as Ex. PX. It reflects the name of the petitioner at serial No.74 and that his services were engaged as a forest worker on 5th July, 2007. The defence of the respondent is that the petitioner was engaged for seasonal work, as and when available with the respondent and subject to the availability of budget. However, the respondent has not placed on the file any document evidencing that the petitioner was employed for seasonal forestry works subject to the availability of funds and the work. Moreover, the mandays chart Ex. RW1/B reveals that in some years, the petitioner had worked for more than 200 days with the respondent/department. In the year 2013, he had served the respondent for 214 days. A person working for 214 days in a year cannot be termed as a seasonal worker. Even otherwise, it is nowhere the plea taken by the respondent nor there is any *iota* of evidence on record to show that the forest department had been declared as a seasonal industry, as required under the law. Shri S.S. Kashyap (RW1) while under cross-examination was categorical that no notification has been issued by the forest department reflecting it as a seasonal industry.

20. The version of the petitioner is that he had worked with the respondent/department upto October, 2013. In the month of November, 2013 his services were finally terminated by the respondent wrongly and illegally. It is not the case of the petitioner that the mandays chart Ex. RW1/B produced by the respondent is incorrect. The mandays chart reveals that in the year 2014, the petitioner had worked for 58 days with the respondent. After that, he had also worked for the respondent from January, 2015 to August, 2015. Since the petitioner had served the respondent after October, 2013, as he had worked from January, 2014 upto August, 2015 for a number of days, I am at a loss to understand as to how it lies in his mouth to say that his services were finally disengaged by the respondent in November, 2013 in a wrongful manner. From the statement made by the petitioner (PW1), it can be gathered that even after the year 2013 he had worked with the respondent. The said fact finds support from the mandays chart, Ex. RW1/B. In view of these facts, it can easily be said that the petitioner is not speaking the truth. His services were never finally terminated by the respondent in the month of November, 2013, as alleged. As no retrenchment order was passed by the respondent in the month of November, 2013, it cannot be said that the termination/retrenchment order is illegal and unjustified.

21. So far as providing the fictional breaks to the petitioner by the respondent from time to time during April, 2000 to October, 2013 is concerned, I would like to say that the said assertion of the petitioner appears to be true. Be it recorded at the risk of repetition that the respondent has not placed and exhibited on record any document to prove that the services of the petitioner used to be engaged for seasonal forestry works depending upon the availability of the budget. A plea was taken by the respondent that the petitioner had himself abandoned the work of

his own free will and volition. If the petitioner used to remain absent from his duties, then why the respondent did not issue any show cause notice to him or initiate disciplinary proceedings against him? The reasons to that effect being obscure go to show that the story put forth by the respondent that the petitioner used to work as per his sweet will and convenience is incorrect. A plea was also taken to the effect that the daily waged labourers were being engaged on bill basis. No doubt, as per the mandays chart Ex. RW1/B since April, 2004 till August, 2015 the petitioner is shown to have done the work on bill basis but, however, as per this document itself, earlier the petitioner was engaged as a daily waged worker on muster roll basis. It is nowhere the case of the respondent, nor any evidence has been led to the effect that for the change in the conditions of the service applicable to the petitioner, a notice in the prescribed manner of the nature of the change proposed to be effected had been served. Section 9-A of the Act clearly provides that no employer, who proposes to effect any change in the conditions of the service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change, without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected. That being the position, the aforesaid plea raised by the respondent merits dismissal and is accordingly negated. Artificial/fictional breaks were provided to the petitioner/workman by the respondent, which amounts to unfair labour practice as per the Fifth Schedule appended to the Act. Such being the situation, it is held that the claim petition with regard to the alleged final termination of services of the petitioner by the respondent in the month of November, 2013 is not maintainable. The claim petition with regard to artificial/fictional breaks is maintainable.

22. These issues are decided accordingly.

Relief:

23. As a sequel to my findings on issues above, the instant claim petition succeeds in part and the same is partly allowed. The claim of the petitioner with regard to the final termination of his services in the month of November, 2013 being meritless and not maintainable is dismissed. However, it is held that the artificial/fictional breaks were provided to the petitioner by the respondent from April, 2000 till October, 2013 wrongly and illegally. The period of fictional breaks is ordered to be counted for the purpose of continuous service, *except back wages*. Since, it is own case of the respondent that the petitioner is still working with the department, so he is directed not to provide fictional breaks to the petitioner in future also. The claim petition to that extent succeeds and is allowed. Parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No.

: 272/2015

Date of Institution : 08-7-2015
Date of Decision : 28-03-2019

Shri Tara Chand *alias* Puran Chand s/o Shri Ramsu, r/o Village Sadehra, P.O. Sidhyani, Tehsil Sadar, District Mandi, H.P. ..*Petitioner.*

Versus

The Divisional Forest Officer, Mandi Forest Division, District Mandi, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Sh. Naveen Chander, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether time to time termination of the services of Shri Tara Chand *alias* Puran Chand s/o Shri Ramsu, r/o Village Sadehra, P.O. Sidhyani, Tehsil Sadar, District Mandi, H.P. by the Divisional Forest Officer, Mandi Forest Division, District Mandi, H.P. during July, 2000 to October, 2013 and finally during November, 2013, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner, as set out in the statement of claim is that his services were engaged as a daily waged forest worker by the respondent on muster roll basis in the year 1984-85. He had worked under the Range Forest Officer, Mandi at Beat Rewalsar upto October, 2013. During this period his services had been engaged on muster rolls and also on bill vouchers. No appointment letter in writing had been given to him at the time of his appointment. Work and funds were available with the department throughout the year in Range Officer, Mandi, but his services were terminated from time to time by giving him fictional breaks from the year 1984-85 to October, 2013. Such breaks were given so that the petitioner could not complete 240 days in each calendar year. The petitioner had approached the respondent time and again not give him fictional breaks, but without success. His service condition had been changed time and again by the department, as some times he was issued muster rolls and at times was given payment on bill vouchers. Persons junior to him were continuously retained in service by the respondent. Shri Parma Ram s/o Shri Ram Lal, who was junior to the petitioner was continuously retained in service by the respondent. His services were finally terminated orally by the respondent in November, 2013. Neither any notice nor retrenchment compensation was given to him. His termination was null and void *ab-initio* and the respondent had violated the principle of natural justice. The act and conduct of the respondent is highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). It also amounts to unfair labour practice.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

- “(i) that the illegal termination/fictional breaks for the period from 1984-85 to October, 2013 be set aside and the respondent be directed to condone the said break period in continuity of his service for the purpose of seniority and to pay him wages for the break periods.
- (ii) his final termination order *w.e.f.* November, 2013 be set aside and the respondent be directed to reinstate his services with full back wages, seniority and continuity of service from the date of his termination till his re-engagement.
- (iii) the respondent be directed to regularize his services after completion of 8 years in service or from the date when his junior was regularized in pay scale 4900—10680 and to pay the arrears from the due date with all consequential service benefits throughout.
- (iv) the respondent be directed to fix the name of the petitioner in the cadre seniority list above his junior and to pay Rs.10,000/- as litigation costs.
- (v) any other relief as deemed fit by the Court be granted to him”.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objection has been taken to the effect that no legal and fundamental right of the petitioner has been infringed by the respondent, so the petition was not maintainable.

On merits, it has been asserted that the petitioner was initially engaged as a casual labourer in the year 1998 and not in the year 1984-85. He was engaged to do seasonal forestry works in the department in Mandi Range. There is no provisions for issuing appointment letter to a daily waged labourer. The services of the petitioner had never been disengaged by the respondent. He had worked with the department intermittently. At the time of his engagement in the year 1998, the petitioner had been apprised by the field staff that the respondent shall not be in a position to provide him work for the whole year. His services were to be coterminous with the closure of the season. Only after his consent, the petitioner was engaged for seasonal activities in the department, *i.e.* plantation, fencing, fire season etc. It is denied that the petitioner had not been allowed by the respondent to complete 240 days in each calendar year. Infact, he had not completed such days in any calendar year. He had never been terminated in the year 2013. He is still working with the department. No fictional breaks had ever been given to the petitioner. He being an intermittent worker had been reporting at the works of his own free will and convenience. Daily waged labourers are being engaged on bill basis in compliance of the directions issued by the Financial Commissioner-cum-Secretary Forests to the government of Himachal Pradesh. It is claimed that as the forest works are seasonal in nature, the labour is required intermittently and not regularly for the whole year. The work is provided as per the availability of work and funds. Service of a casual labour is utilized as per the availability of work and funds, on the basis of the principle of ‘first come last go’. The dispute has been raised by the petitioner at a much belated stage. Shri Parma Ram had never been engaged on work or retained continuously in the Mandi Forest Division. No junior worker is working with the respondent. The work is being provided to the petitioner, as and when available.

In these circumstances, the respondent prayed that the petition in hand be dismissed.

4. In the rejoinder, the petitioner reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 01-4-2016:—

- (1) Whether time to time termination of the services of petitioner during July, 2000 to October, 2013 by the respondent is illegal and unjustified as alleged? ..*OPP*.
- (2) Whether final termination of services of the petitioner by the respondent during November, 2013 is illegal and unjustified as alleged? ..*OPP*.
- (3) If issue No.1 & issue No. 2 are proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (4) Whether the present claim petition/reference is not maintainable in the present form as alleged? ..*OPR*.
Relief

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Tara Chand alias Puran Chand appeared as PW1 and tendered in evidence his statement by way of affidavit as Ex. PW1/A and copy of seniority list as Ex. PW1/B. The respondent examined one Shri S.S. Kashyap as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of mandays chart as Ex. RW1/B, copy of letter dated 25-9-2001 as Ex. RW1/C and copy of seniority list of daily wagers as Ex. RW1/D.

7. Arguments of the learned Authorized Representative for the petitioner and learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: Decided accordingly
Issue No. 2	: Decided accordingly
Issue No. 3	: Decided accordingly
Issue No. 4	: Decided accordingly
Relief	: Petition is partly allowed per operative part of the award.

REASONS FOR FINDINGS

Issues No. 1 to 4:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Tara Chand alias Puran Chand (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he had worked with the department after November, 2013 also. He was also categorical that he had been kept at work in November, 1998. Thereafter, stated that he had been working since 1984-85. He denied that he had never worked with the department from the year 1984 up to November, 1998. He also denied that he had worked on bill basis. He categorically denied that no person junior to him had been kept at work.

It was also denied by him that neither he had been removed, nor had been given fictional breaks by the department. He further denied that he had left the work of his own and that he had been doing the work intermittently. He denied that he never worked for 240 days or more in any year. He also denied that Shri Parma Ram had never worked with the department. He specifically denied that he had raised a demand notice in the year 2013. He owns some land, which he cultivates.

11. Ex. PW1/B is the seniority list of daily waged workers *w.e.f.* January, 1997 to December, 2006.

12. Ex. PX is the copy of seniority list of forest worker as it stood on 1-1-2017, Mandi Forest Division, Mandi.

13. Conversely, Shri S.S. Kashyap, Divisional Forest Officer, Mandi (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the department had kept the petitioner on work in the year 1984-1985. Volunteered that, he had been kept in the year 1998. He admitted that no appointment letter is issued at the time of engagement of daily wagger on muster rolls or bill basis. He was categorical that no notification has been issued by the department showing the forest department as a seasonal industry. He denied that the department had intentionally given fictional breaks to the petitioner so that he could not complete 240 days in each year. He admitted that Ex. PW1/B had been issued by the department, showing the names of 13 workers, who had been engaged from time to time by the department. Self stated that, it was as per availability of work, being seasonal. He clearly admitted that daily wagers mentioned in Ex. RW1/D were given more than 240 days of work by the department. Volunteered that, they were given the work as per the availability of work. He denied that a junior had been continuously kept at work by the department. As per Ex. RW1/D, some people had been regularized. He clearly admitted that seniority list Ex. PX had been issued by the department. As per this seniority list many persons are junior to the petitioner.

14. Ex. RW1/B is the copy of the mandays chart relating to the petitioner.

15. Ex. RW1/C is a copy of letter dated 20-10-2001 from Principal Chief Conservator of Forests, Himachal Pradesh regarding the execution of various works.

16. Ex. RW1/D is the copy of seniority list of daily wagger Mandi Forest Division, Mandi, who had completed 240 days in each calendar year and were working continuously.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wagger. The mandays chart Ex. RW1/B unfolds that the petitioner was initially employed in the month of December, 1998 by the respondent. Although, the petitioner has claimed that his services were engaged as a daily wagger by the respondent in the year 1984, but he has not placed on record any document in this regard.

18. The mandays chart Ex. RW1/B clarifies that the month of initial engagement of the petitioner is December, 1998. Placed on record by the petitioner is a copy of seniority list of forest workers of Mandi Forest Division, as it stood on 1-1-2017 as Ex. PX. It reflects the name of the petitioner (Puran Chand) at serial No.10 and that his services were engaged as a forest worker on 8th January, 1998. The defence of the respondent is that the petitioner was engaged for seasonal work, as and when available with the respondent and subject to the availability of budget.

However, the respondent has not placed on the file any document evidencing that the petitioner was employed for seasonal forestry works subject to the availability of funds and the work. Moreover, the mandays chart Ex. RW1/B reveals that in some years, the petitioner had worked for more than 150 days with the respondent/department. In the year 2013, he had served the respondent for 198 days. A person working for 198 days in a year cannot be termed as a seasonal worker. Even otherwise, it is nowhere the plea taken by the respondent nor there is any iota of evidence on record to show that the forest department had been declared as a seasonal industry, as required under the law. Shri S.S. Kashyap (RW1) while under cross-examination was categorical that no notification has been issued by the forest department reflecting it as a seasonal industry.

19. The version of the petitioner is that he had worked with the respondent/department upto October, 2013. In the month of November, 2013 his services were finally terminated by the respondent wrongly and illegally. It is not the case of the petitioner that the mandays chart Ex. RW1/B produced by the respondent is incorrect. The mandays chart reveals that in the years 2014-15, the petitioner had worked with the respondent. Since the petitioner had served the respondent after October, 2013, as he had worked in the month of November, 2013 and from January, 2014 upto August, 2015 for a number of days, I am at a loss to understand as to how it lies in his mouth to say that his services were finally disengaged by the respondent in November, 2013 in a wrongful manner. From the statement made by the petitioner (PW1), it can be gathered that even after the year 2013 he had worked with the respondent. The said fact finds support from the mandays chart, Ex. RW1/B. In view of these facts, it can easily be said that the petitioner is not speaking the truth. His services were never finally terminated by the respondent in the month of November, 2013, as alleged. As no retrenchment order was passed by the respondent in the month of November, 2013, it cannot be said that the termination/retrenchment order is illegal and unjustified.

20. So far as providing the fictional breaks to the petitioner by the respondent from time to time during July, 2000 to October, 2013 is concerned, I would like to say that the said assertion of the petitioner appears to be true. Be it recorded at the risk of repetition that the respondent has not placed and exhibited on record any document to prove that the services of the petitioner used to be engaged for seasonal forestry works depending upon the availability of the budget. A plea was taken by the respondent that the petitioner had himself abandoned the work of his own free will and volition. If the petitioner used to remain absent from his duties, then why the respondent did not issue any show cause notice to him or initiate disciplinary proceedings against him? The reasons to that effect being obscure go to show that the story put forth by the respondent that the petitioner used to work as per his sweet will and convenience is incorrect. A plea was also taken to the effect that the daily waged labourers were being engaged on bill basis. No doubt, as per the mandays chart Ex. RW1/B since March, 2003 till August, 2015 the petitioner is shown to have done the work on bill basis but, however, as per this document itself, earlier the petitioner was engaged as a daily waged worker on muster roll basis. It is nowhere the case of the respondent, nor any evidence has been led to the effect that for the change in the conditions of the service applicable to the petitioner, a notice in the prescribed manner of the nature of the change proposed to be effected had been served. Section 9-A of the Act clearly provides that no employer, who proposes to effect any change in the conditions of the service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change, without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected. That being the position, the aforesaid plea raised by the respondent merits dismissal and is accordingly negated. Artificial/fictional breaks were provided to the petitioner/workman by the respondent, which amounts to unfair labour practice as per the Fifth Schedule appended to the Act. Such being the situation, it is held that the claim petition with regard to the alleged final termination of services of

the petitioner by the respondent in the month of November, 2013 is not maintainable. The claim petition with regard to artificial/fictional breaks is maintainable.

21. These issues are decided accordingly.

Relief:

22. As a sequel to my findings on issues above, the instant claim petition succeeds in part and the same is partly allowed. The claim of the petitioner with regard to the final termination of his services in the month of November, 2013 being meritless and not maintainable is dismissed. However, it is held that the artificial/fictional breaks were provided to the petitioner by the respondent from July, 2000 till October, 2013 wrongly and illegally. The period of fictional breaks is ordered to be counted for the purpose of continuous service, *except back wages*. Since, it is own case of the respondent that the petitioner is still working with the department, so he is directed not to provide fictional breaks to the petitioner in future also. The claim petition to that extent succeeds and is allowed. Parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No.	: 411/2016
Date of Institution	: 27-6-2016
Date of Decision	: 29-03-2019

Shri Kuldeep Singh s/o Shri Ghian Chand, r/o V.P.O. Harnota, Tehsil Jawali, District Kangra, H.P. *..Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D., Nurpur Division, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D., Jawali Division, District Kangra, H.P. *..Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. Naresh Kaul, Adv.
For the Respondent(s)	: Sh. Tarsem Kumar, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Kuldeep Singh s/o Shri Ghian Chand, r/o V.P.O. Harnota, Tehsil Jawali, District Kangra, H.P. during 1990 by (i) the Executive Engineer, H.P.P.W.D. Nurpur Division, District Kangra, H.P., (ii) the Executive Engineer, H.P.P.W.D. Jawali Division District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified; whereas he has raised the dispute *vide* demand notice dated nil received in the Labour Office Dharamshala on 04-03-2013 after lapse of 22 years. If not, keeping in view delay of more than 22 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis in the year 1986 in HPPWD Sub-Divisions-I and II, Nurpur and had worked as such till the year 1990, when his services were illegally terminated by the respondents. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the re-engaged employees as detailed in para No.3 of the petition. The mates of the petitioner were S/Shri Ram Singh, Sudershan and Jagdish. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were reengaged on 25-5-2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his re-engagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“that the termination/retrenchment of the petitioner by the employer/opposite party be declared null and void and he be ordered to be re-engaged at that very place, from where he was retrenched alongwith all consequential benefits and other allowances and salary, besides other benefits and regularization after 10 years of service with seniority and back wages alongwith interest @18% per annum. Other relief(s) be also provided to the petitioner, as deemed fit”.

3. On notice, the respondents appeared. Only respondent No.1 filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on the grounds of delay and laches have been taken.

On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from the year 1987 upto June, 1990. It was asserted that the petitioner had never been engaged by the respondent so the question of completing 240 days did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondent, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondent. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, *i.e.* after about 21 years.

In these circumstances, respondent No.1 prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by respondent No.1.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 7-7-2018:—

- (1) Whether termination of the services of petitioner by the respondents during year 1990 is/was legal and justified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged? ..*OPR.*

Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Kuldeep Singh examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19-8-1998 as Ex. PW1/B, copy of letter dated 18-12-1999 as Ex. PW1/C, copy of notice dated 4-5-2002 as Ex. PW1/D, copy of resolution dated 18-7-2002 as Ex. PW1/E, copy of UPC and registered postal receipts as Ex. PW1/F & G and copy of letter dated 18-1-2000 as Ex. PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23-7-1994 as Ex. RW1/C, copy of office order dated 29-11-2010 as Ex. RW1/D, copy of letter dated 19-8-1998 as Ex. RW1/E, copy of application dated 18-12-1999 filed by Kusum Lata as Ex. RW1/F, copy of letter dated 18-1-2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of working days chart of Smt. Kusum Lata as Ex. RW1/I & Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: Yes
Issue No. 2	: No
Issue No. 3	: Yes
Issue No. 4	: Not pressed/redundant
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Kuldeep Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification No. PBW-(A)-A(1)17/94. He denied that he had never worked with the respondents. Volunteered that, he had worked regularly from the year 1985 upto the year 1990. He denied that he had never worked for the period from the year 1985 upto the year 1990. He further denied that he was never disengaged by the respondent/department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

12. Ex. PW1/B is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as a daily waged Store Clerk.

13. Ex. PW1/C is the copy of letter dated 18-12-1999 to the Chief Executive Engineer, HPPWD, US Club, Shimla by Smt. Kusum Lata.

14. Ex. PW1/D is the copy of letter dated 4-5-2002 regarding notice under Section 80 of CPC to The Secretary, H.P. Public Works Department, Government of Himachal Pradesh, Shimla.

15. Ex. PW1/E is the copy of letter dated 18-7-2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh.

16. Ex. PW1/F is the copy of letter/UPC dated 18-7-2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh and others.

17. Ex. PW1/G is the copy of postal receipts.
18. Ex. PW1/H is the copy of letter dated 18-1-2000 from Chief Engineer, HPPWD, Shimla to Executive Engineer, HPPWD, 9th Circle, HPPWD, Nurpur.
19. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 upto the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.
20. PW3 Shri Harnam Singh stated that he was engaged in the year 1984-85 in HPPWD Division, Nurpur. After about one year, he had become a mate. He was removed by the department in the year 1990, when he had obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.
21. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.
22. In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29-11-2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.
23. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to shift of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.
24. Ex. RW1/C is the copy of Office Order dated 23-7-1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.
25. Ex. RW1/D is the copy of another Office Order dated 29-11-2010 with regard to implementation of the award of this Court dated 22-12-2007.
26. Ex. RW1/E is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.
27. Ex. RW1/F is the copy of letter dated 18-12-1999 regarding representation of Smt. Kusum Lata.
28. Ex. RW1/G is the copy of letter dated 18-1-2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

29. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

30. Ex. RW1/I is the copy of working days chart of Smt. Kusum Lata working under Banikhet Sub-Division HPPWD Banikhet.

31. Ex. RW1/J is the copy of working days chart of Smt. Kusum Lata working under Suliali Sub-Division HPPWD Suliali.

32. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the year 1986 and that he had worked as such upto the year 1990. It was the stand taken by respondent No.1 that the petitioner had never been engaged by the department. Although, the petitioner (PW1) in his cross-examination denied the fact that he had never been engaged as a daily waged beldar in the year 1985 by the respondents and that he had not worked as such upto the year 1990, but, however, respondent No.1 has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. This mandays chart pertains to HPPWD Division Jawali. Its perusal reveals that the petitioner had not worked with respondent No.2 even for a single day from the year 1986 upto the year 1990. The petitioner in his substantive evidence also clearly admitted that he never worked in Jawali Division. No mandays chart has been proved on record by the petitioner showing him to have ever worked with respondent No.1. In view of this fact, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that there existed a relationship of employer and employee/workman in between the parties. Significantly, the petitioner neither in his pleadings, nor in his ocular evidence has stated the date on which he was engaged by respondent no.1. There is also no pleading or evidence to the effect as to on which specific date his services stood terminated by this respondent. Only the months and years of joining and termination of the petitioner stand specified in the statement of claim and his statement by way of affidavit Ex. PW1/A. Although, witnesses, namely, Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3), were examined by the petitioner in support of his case, but I find that their statements are of no help to him, as their service records were not brought on record to show that they had ever been engaged by the department. Then, it is nowhere the case of the petitioner that he had ever marked his attendance in all those six years, the period for which he claims to have worked with the respondent. Had there been any attendance register in which the petitioner had appended his signatures, he ought to have placed and exhibited on record the same so as to show that his services had been engaged by the respondent from the year 1986 upto the year 1990. But, so is not the case here. No such attendance register has seen the light of the day, nor any prayer had been made by the petitioner for the production of the same from the respondents during the pendency of this case. Further, he could have easily proved the muster rolls for the period for which he had worked. But, no such muster roll has been produced. Even no appointment letter to show that the services of the petitioner had been engaged by the respondents, has been placed on record by him.

33. From the ocular and documentary evidence of respondent No.1 available on record, it can be gathered that the petitioner had never been appointed in any capacity at any point of time by the respondents.

34. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondents, therefore, the provisions of Section 25-F of the Act are not attracted in this case. The respondents can also not be held to have violated the provisions of Sections 25-G, 25-H and 25-N of the Act, as the relationship of the petitioner and the respondents being that of a workman and employer stands not established on record.

35. In view of the discussion and findings aforesaid, it appears to me that the avarice of the petitioner to grab government job and money had forced him to file a totally false and baseless claim. He is not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

36. Taking into account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4:

37. Not pressed. Even otherwise, the plea of delay and laches would have been relevant, had the petitioner been able to prove the demand notice as well as the fact of he being a workman under the respondents for the alleged period. Hence, this issue becomes redundant.

Relief:

38. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition being meritless, not maintainable and malafide, fails. It is, therefore, dismissed with costs quantified at ₹ 5,000/-. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No.	: 470/2016
Date of Institution	: 20-8-2016
Date of Decision	: 29-03-2019

Shri Prakash Chand s/o Shri Jigri Ram, r/o Village Manua, P.O. Aundh, Tehsil Nurpur,
District Kangra, H.P. *..Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D., Division, Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P. *..Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. Naresh Kaul, Adv.
For the Respondent(s)	: Sh. Tarsem Kumar, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Prakash Chand s/o Shri Jigri Ram, r/o Village Manua, P.O. Aundh, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P., (2) The Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after about 21 years *vide* demand notice dated -nil- received on 13-06-2011, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of after about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis in the year 1985 in HPPWD Sub-Divisions-I and II, Nurpur and had worked as such till the year 1990, when his services were illegally terminated by the respondents. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the reengaged employees as detailed in para No. 3 of the petition. The mates of the petitioner were S/Shri Has Raj and Kushal. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were re-engaged on 25-5-2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his re-engagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“that the termination/retrenchment of the petitioner by the employer/opposite party be declared null and void and he be ordered to be re-engaged at that very place, from where he was retrenched alongwith all consequential benefits and other allowances and salary, besides other benefits and regularization after 10 years of service with seniority and back wages alongwith interest @18% per annum. Other relief(s) be also provided to the petitioner, as deemed fit”.

3. On notice, the respondents appeared. Only respondent No.1 filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on the grounds of delay and laches have been taken.

On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from the year 1985 upto the year 1990. It was asserted that the petitioner had never been engaged by the respondent so the question of completing 240 days did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondent, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondent. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, *i.e.* after about 26 years.

In these circumstances, respondent No.1 prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by respondent No. 1.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24-3-2018:—

- (1) Whether termination of services of the petitioner by the respondents during year, 1990 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? ..*OPR.*

Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Prakash Chand examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19-8-1998 as Ex. PW1/B, copy of letter dated 18-12-1999 as Ex. PW1/C, copy of notice dated 4-5-2002 as Ex. PW1/D, copy of resolution dated 18-7-2002 as Ex. PW1/E, copy of UPC and registered postal receipts as Ex. PW1/F & G and copy of letter dated 18-1-2000 as Ex. PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23-7-1994 as Ex. RW1/C, copy of office order dated 29-11-2010 as Ex. RW1/D, copy of letter dated 19-8-1998 as Ex. RW1/E, copy of application dated 18-12-1999 filed by Kusum Lata as Ex. RW1/F, copy of letter dated

18-1-2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of working days chart of Smt. Kusum Lata as Ex. RW1/I & Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Yes
Issue No. 4	: Not pressed/redundant
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Prakash Chand (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification No. PBW-(A)-A(1)17/94. He admitted that he had never worked in Jawali Division. Volunteered that, he had worked in Nurpur Division. He denied that he had not worked in Nurpur Division. He also denied that he had never worked with the respondents. Self stated that, he had worked regularly from the year 1985 upto the year 1990. He denied that he had never worked for the period from the year 1985 upto the year 1990. He further denied that he was never disengaged by the respondent/department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

12. Ex. PW1/B is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as a daily waged Store Clerk.

13. Ex. PW1/C is the copy of letter dated 18-12-1999 to the Chief Executive Engineer, HPPWD, US Club, Shimla by Smt. Kusum Lata.

14. Ex. PW1/D is the copy of letter dated 4-5-2002 regarding notice under Section 80 of CPC to The Secretary, HP Public Works Department, Government of Himachal Pradesh, Shimla.

15. Ex. PW1/E is the copy of letter dated 18-7-2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh.

16. Ex. PW1/F is the copy of letter/UPC dated 18-7-2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh and others.

17. Ex. PW1/G is the copy of postal receipts.

18. Ex. PW1/H is the copy of letter dated 18-1-2000 from Chief Engineer, HPPWD, Shimla to Executive Engineer, HPPWD, 9th Circle, HPPWD, Nurpur.

19. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 upto the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

20. PW3 Shri Harnam Singh stated that he was engaged in the year 1984-85 in HPPWD Division, Nurpur. After about one year, he had become a mate. He was removed by the department in the year 1990, when he had obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

21. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

22. In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29-11-2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

23. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to shift of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

24. Ex. RW1/C is the copy of Office Order dated 23-7-1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

25. Ex. RW1/D is the copy of another Office Order dated 29-11-2010 with regard to implementation of the award of this Court dated 22-12-2007.

26. Ex. RW1/E is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

27. Ex. RW1/F is the copy of letter dated 18-12-1999 regarding representation of Smt. Kusum Lata.

28. Ex. RW1/G is the copy of letter dated 18-1-2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

29. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

30. Ex. RW1/I is the copy of working days chart of Smt. Kusum Lata working under Banikhet Sub Division HPPWD Banikhet.

31. Ex. RW1/J is the copy of working days chart of Smt. Kusum Lata working under Suliali Sub Division HPPWD Suliali.

32. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the year 1985 and that he had worked as such upto the year 1990. It was the stand taken by respondent No.1 that the petitioner had never been engaged by the department. Although, the petitioner (PW1) in his cross-examination denied the fact that he had never been engaged as a daily waged beldar in the year 1985 by the respondents and that he had not worked as such upto the year 1990, but, however, respondent No.1 has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. This mandays chart pertains to HPPWD Division Jawali. Its perusal reveals that the petitioner had not worked with respondent No. 2 even for a single day from the year 1985 upto the year 1990. The petitioner in his substantive evidence also clearly admitted that he never worked in Jawali Division. No mandays chart has been proved on record by the petitioner showing him to have ever worked with respondent No.1. In view of this fact, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that there existed a relationship of employer and employee/workman in between the parties. Significantly, the petitioner neither in his pleadings, nor in his ocular evidence has stated the date on which he was engaged by respondent No.1. There is also no pleading or evidence to the effect as to on which specific date his services stood terminated by this respondent. Only the months and years of joining and termination of the petitioner stand specified in the statement of claim and his statement by way of affidavit Ex. PW1/A. Although, witnesses, namely, Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3), were examined by the petitioner in support of his case, but I find that their statements are of no help to him, as their service records were not brought on record to show that they had ever been engaged by the department. Then, it is nowhere the case of the petitioner that he had ever marked his attendance in all those six years, the period for which he claims to have worked with the respondent. Had there been any attendance register in which the petitioner had appended his signatures, he ought to have placed and exhibited on record the same so as to show that his services had been engaged by the respondent from the year 1985 upto the year 1990. But, so is not the case here. No such attendance register has seen the light of the day, nor any prayer had been made by the petitioner for the production of the same from the respondents during the pendency of this case. Further, he could have easily proved the muster rolls for the period for which he had worked. But, no such muster roll has been produced. Even no appointment letter to show that the services of the petitioner had been engaged by the respondents, has been placed on record by him.

33. From the ocular and documentary evidence of respondent No.1 available on record, it can be gathered that the petitioner had never been appointed in any capacity at any point of time by the respondents.

34. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondents, therefore, the provisions of Section 25-F of the Act are not attracted in this case. The respondents can also not be held to have violated the provisions of Sections 25-G, 25-H and 25-N of the Act, as the relationship of the petitioner and the respondents being that of a workman and employer stands not established on record.

35. In view of the discussion and findings aforesaid, it appears to me that the avarice of the petitioner to grab government job and money had forced him to file a totally false and baseless claim. He is not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

36. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4:

37. Not pressed. Even otherwise, the plea of delay and laches would have been relevant, had the petitioner been able to prove the demand notice as well as the fact of he being a workman under the respondents for the alleged period. Hence, this issue becomes redundant.

Relief:

38. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition being meritless, not maintainable and malafide, fails. It is, therefore, dismissed with costs quantified at ₹ 5,000/-. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No.	: 624/2016
Date of Institution	: 01-9-2016
Date of Decision	: 30-03-2019

Shri Parmodh Singh s/o Shri Nikka Ram, r/o Village and Post Office Aundh, Tehsil Nurpur, District Kangra, H.P. ..Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D., Division, Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P. ..*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. Naresh Kaul, Adv.
For the Respondent(s)	: Sh. Tarsem Kumar, A.D.A.
AWARD	

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Parmodh Singh s/o Shri Nikka Ram, r/o Village and Post Office Aundh, Tehsil Nurpur, District Kangra, H.P. during August, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P., (2) The Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after about 21 years *vide* demand notice dated -nil- received on 13-06-2011, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis in the year 1983 in HPPWD Sub-Divisions-I and II, Nurpur and had worked as such till the year 1991, when his services were illegally terminated by the respondents. He had completed more than 240 days in 12 calendar months from the date of his retrenchment. HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the reengaged employees as detailed in para No. 3 of the petition. The mates of the petitioner were S/Shri Karnail Singh, Kewal and Satpal. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No.1 had illegally terminated/retrenched the services of the petitioner in the year 1991 and the juniors mentioned in para 3 of the petition were reengaged on 25-5-2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his reengagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“that the termination/retranchment of the petitioner by the employer/opposite party be declared null and void and he be ordered to be re-engaged at that very place, from where he was retrrenched alongwith all consequential benefits and other allowances and salary, besides other benefits and regularization after 10 years of service with seniority and back wages alongwith interest @18% per annum. Other relief(s) be also provided to the petitioner, as deemed fit”.

3. On notice, the respondents appeared. Only respondent No.1 filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on the grounds of delay and laches have been taken.

On merits, it is denied that the services of the petitioner had been engaged as beldar in the year 1983 in HPPWD Division, Nurpur. It is also denied that the petitioner was disengaged by the respondents in the year 1991. It is asserted that he was engaged as a daily wager by HPPWD Sub Division Suliali, Division Jassur and had worked intermittently *w.e.f.* January, 1986 upto August, 1990. He had not completed 240 days in every calendar year (excluding the year 1988 *i.e.* 287 days and 1989 *i.e.* 269 days). The petitioner thereafter had left the work of his own sweet will and had never approached the department. It is claimed that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It is denied that respondent No.1 had reengaged workers on 25-5-2010. Infact workers were reengaged by the respondents as per the orders of the Hon'ble High Court. It is admitted that HPPWD Divisions Nurpur and Jawali are involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. It is denied that a pick and choose policy had been adopted by the respondents. Neither any junior had been retained nor engaged by the respondent, so there was no violation of provisions of Sections 25-G and 25-H of the Act. It is denied that the petitioner had made various requests and that assurances had been given to him by the respondents. After leaving the work in August, 1990, the petitioner had never approached the respondents and had raised the demand notice only in the year 2011, *i.e.* after about 21 years.

In these circumstances, respondent No.1 prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by respondent No.1.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24-3-2018:—

- (1) Whether termination of services of the petitioner by the respondents during August, 1990 is/was illegal and unjustified as alleged? ..OPP.
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
- (3) Whether the claim petition is not maintainable in the present form? ..OPR.
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? ..OPR.

Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Parmodh Singh examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19-8-1998 as Ex. PW1/B, copy of letter dated 18-12-1999 as Ex. PW1/C, copy of notice dated 4-5-2002 as Ex. PW1/D, copy of resolution dated 18-7-2002 as Ex. PW1/E, copy of UPC and registered postal receipts as Ex. PW1/F & G and copy of letter dated 18-1-2000 as Ex. PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23-7-1994 as Ex. RW1/C, copy of office order dated 29-11-2010 as Ex. RW1/D, copy of letter dated 19-8-1998 as Ex. RW1/E, copy of application dated 18-12-1999 filed by Kusum Lata as Ex. RW1/F, copy of letter dated 18-1-2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of working days chart of Smt. Kusum Lata as Ex. RW1/I & Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: No
Relief	: Petition is partly allowed awarding lump sum compensation of ` 1,00,000/- per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1, 2 and 4:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Parmodh Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification No. PBW-(A)-A(1)17/94. He denied that he had never worked with the respondents. Volunteered that, he had worked regularly from the year 1983 upto the year 1991. He denied that from the year 1986 upto the year 1990 he had worked intermittently. He denied that he had never worked from the year 1983 upto the year 1985 and in the year 1991. He further denied that neither he was given breaks nor disengaged by the department. It was also denied by him that no juniors to him had been kept at work. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns

land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

12. Ex. PW1/B is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as a daily waged Store Clerk.

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18. Ex. PW1/H is the copy of letter dated 18-1-2000 from Chief Engineer, HPPWD, Shimla to Executive Engineer, HPPWD, 9th Circle, HPPWD, Nurpur.

19. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 upto the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

20. PW3 Shri Harnam Singh stated that he was engaged in the year 1984-85 in HPPWD Division, Nurpur. After about one year, he had become a mate. He was removed by the department in the year 1990, when he had obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

21. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

22. In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had

been kept at work after 29-11-2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

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30. Ex. RW1/I is the copy of working days chart of Smt. Kusum Lata working under Banikhet Sub-Division HPPWD Banikhet.

31. Ex. RW1/J is the copy of working days chart of Smt. Kusum Lata working under Suliali Sub-Division HPPWD Suliali.

32. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondents in the year 1983 and that he had worked as such upto the year 1991. The respondents took the stand that the petitioner had been engaged as a daily waged beldar in HPPWD Sub-Division Suliali *w.e.f.* January, 1986 and that he had worked intermittently upto August, 1990. The petitioner denied this case of the respondents. He while under cross-examination categorically denied that he had never worked with the department from the years 1983 to 1985 and in the year 1991. However, the respondents have placed and proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. Its perusal discloses that the services of the petitioner were engaged by respondent No.2 in the month of January, 1986 for the first time as a daily waged beldar and he had worked as such upto August, 1990. The claimant/petitioner has not placed and exhibited on record any document to show that he had regularly worked with the respondents from the year 1983 upto the year 1991.

33. A plea was taken by the respondents that the petitioner had abandoned the work himself. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand*** reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondents calling upon him to resume the duties. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings

were initiated against the petitioner by the respondents for his alleged willful absence from duty. Thus, the plea of abandonment put forth by the respondents/employers is not established.

34. It was next contended by the learned Assistant District Attorney for the respondents that the petitioner had not worked for 240 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had completed working for more than 240 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

35. Section 25-B of the Act defines “continuous service”. In terms of Sub-Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The petitioner claimed that he was employed in the year 1983 and his services were retrenched in the year 1991 and during the period between 1983 to 1991, he had worked for a period of more than 240 days. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been laid by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

36. Applying the principles laid down in the above case by the Hon’ble Supreme Court, the evidence produced has to be looked into. The respondents claimed that the petitioner did not work for 240 days. The petitioner was a workman hired on a daily waged basis. So, it is obvious that he would have difficulty in having access to all the official documents, muster rolls etc. in connection with his service. He has come forward and deposed, so in my humble opinion the burden of proof shifts to the employer/respondents to prove that he did not complete 240 days of service in the requisite period to constitute continuous service. At the risk of repetition, per the mandays chart copy of which is Ex. RW1/H, the petitioner had initially been engaged in January, 1986 as a daily wager and he had worked upto August, 1990. As per the reference the services of the petitioner were terminated in August, 1990. It was the contention of the respondents that they had not terminated the services of the petitioner, but he had abandoned the work. However, this plea of abandonment of the respondents has already been negated by me above. As per the mandays chart Ex. RW1/H, the petitioner had worked for 139 days in the year 1986, 153 days in the year 1987, 287 days in the year 1988, 269 days in the year 1989 and for 150 days in the year 1990. Thus, in his total service for a period of five years in between January, 1986 to August, 1990, he had only worked for 998 days. Be it recorded here that the petitioner had worked for more than 240 days preceding twelve calendar months from the date of his termination, which is stated in the reference as August, 1990. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination. It is established on record that the petitioner had worked for 240 days preceding twelve calendar months from date of his termination. It is evident from the mandays chart that from August, 1989 upto July, 1990, the petitioner had worked for 246 days i.e. for 29 days in the month of August, 28 days in the month of September, 23 days in the month of October, 21 days in the month of November, and 15 days in the month of December for the year 1989 and 12 days in the month of February, 27 days in the month of March, 30 days in the month of April, 22 days in the month of May, 26 days in the month of June and 13 days in the month of July for the year 1990. Therefore, during a period of twelve calendar months anterior to the date of termination, the petitioner had actually worked under the employer for not less than 240 days, so as to meet the requirement of law of having continuous service of one year, as provided under section 25-B of the Act. Thus, it was required of

the respondents to have issued one month's notice in writing to the petitioner indicating the reasons for retrenchment, prior to his termination. It is not the case of the respondents that any such notice had been served upon the petitioner or any retrenchment compensation had been paid to him. So, it can be said that the petitioner's service was terminated without complying with the provisions of Section 25-F of the Act.

37. Section 25-N of the Act provides for the procedure for retrenchment. The said Section reads:—

“25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

.....

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.....”

38. Admittedly, no notice as provided under Section 25-N (a) of the Act was served upon the petitioner, nor any prior permission of the appropriate Government or such authority as specified by the Government by a notification in the Official Gazette had been obtained by the respondents, as provided under Section 25-N (b) of the Act. So, it can be said that the services of the petitioner had also been terminated without complying with the provisions of Section 25-N of the Act.

39. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondents. A detail of such persons has been given in para 3 of the statement of claim. Shri Parmodh Singh (PW1) also named such persons to be junior to him in his chief-examination, being in the shape of affidavit Ex. PW1/A. The respondents, and in particular respondent No.1, refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the respondents after his alleged termination. Significantly, no seniority list has been placed and exhibited on record or any other witness examined so as to show that the persons named in the statement of claim and in his affidavit by the petitioner were junior to him and who had been retained by the respondents at the time of the termination of his services. The statements of the witnesses examined by the petitioner as Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3) are silent in this regard. There is also no whisper in their testimonies that persons junior to the petitioner are still in service. PW3 Shri Harnam Singh claimed that his services were engaged by respondent No.1 in the year 1984-85, whereas, it is apparent from the record that the services of the petitioner as daily waged beldar for the first time were engaged by respondent No.2 in the month of January, 1986. So, as per the own testimony of this witness of the petitioner, he was senior to him. Shri Sukar Deen (PW2) claimed himself to have been engaged by respondent No.1 in the year 1986. He has not mentioned in his substantive evidence the date and month of his initial engagement. It is also not made out from his sworn testimony that he was junior to the petitioner. So, the testimonies of the aforesaid witnesses are of no help to the petitioner to establish on record that the principle of 'last come first go' had not been adhered to by the respondents. Then, no prayer had ever been made by the petitioner for the production of the seniority list from the respondents during the pendency of this case.

40. Faced with the situation, by referring to the copy of mandays chart pertaining to Smt. Kusum Lata which has been placed on record by respondent No.1 as Ex. RW1/J, it was contended by the learned Counsel for the petitioner that she is certainly junior to the petitioner, as she is shown to have been engaged in service in Suliali Sub Division, HPPWD Suliali in February, 2000. This cannot be accepted. Placed on record by respondent No.1 is another copy of mandays chart pertaining to said Smt. Kusum Lata as Ex. RW1/I. As per this document Smt. Kusum Lata had initially been engaged in the month of November, 1983 in Sub Division No.1 HPPWD, Banikhet and that she had continued to work as such there uptil November, 1988. Placed on record is also her representation to the Engineer-in-Chief, HPPWD Shimla, copy of which is Ex. RW1/F. On her representation, it is evident that she stood transferred and posted as a daily waged Store Clerk from 7th Circle HPPWD Dalhousie to 9th Circle HPPWD Nurpur. Reference in this regard can be made to the copy of letter dated 18-1-2000 of Engineer-in-Chief, HPPWD Shimla, Ex. RW1/G. On allotment of one post of Store Clerk in 9th Circle, HPPWD Nurpur, *vide* the aforesaid letter, Smt. Kusum Lata was adjusted as such there, where she has been working regularly from the year 2000 uptil January, 2009, as is evident from the copy of her mandays days chart, Ex. RW1/J. So, she can also not be termed as a junior to the petitioner. There is nothing on record to show that the services of said Smt. Kusum Lata had ever been disengaged at any point of time. Rather she appears to have been working with the HPPWD Division Nurpur. Her joining in the 9th Circle HPPWD Nurpur, on her request in the month of February, 2000 cannot make her a junior to the petitioner, particularly when her year of joining is much prior to that of the petitioner in the HPPWD department *i.e.* she was engaged in the year 1983, whereas the petitioner, as discussed above, had initially been engaged in the year 1986. So, it cannot be said that Smt. Kusum Lata being a junior to the petitioner had been retained in service by the respondents. Therefore, it cannot be said that the respondents had violated the principle of 'last come first go', as envisaged in Section 25-G of the Act.

41. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands have been engaged by the respondents. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

42. While testifying in the Court as PW1, the petitioner has given his age as 51 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he is an agriculturist and earns his livelihood by doing agricultural chores. It is also evident from his cross-examination that he is having landed property. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

43. The learned Assistant District Attorney for the respondents contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. vs. Dilu Ram*** (CWP No. 95/2000 decided on 26-8-2004) wherein it was *inter alia* held:—

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh v. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR 137 (SC)....”

44. In ***Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160***, delay of more than 10 years was condoned by our own Hon'ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon'ble Supreme Court in ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82*** that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

45. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Dharamshala appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh *vide* his report under Section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, *vide* Notification No.11-1/85 (Lab)ID/2016-Kangra, dated 20th August, 2016. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned District Attorney merits rejection and is rejected.

46. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh*** reported in ***2013 (136) FLR 893 (SC)***, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment,

length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791**, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about 05 years and actually worked for 998 days as per mandays chart on record and that the services of petitioner were disengaged in August, 1990, who had worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **twenty one years** i.e. demand notice was given in the year 2011. It is also pertinent to mention here that the petitioner on the date of filing the claim petition, was aged 51 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for lump sum compensation.

47. In view the discussion and findings arrived at by me above, a lump-sum compensation of `1,00,000/- (Rupees one lakh only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue No.4 is answered in the negative and against the respondents.

Issue No. 3:

48. It has not been shown by the respondents as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondents at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondents.

Relief:

49. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondents are hereby directed to pay a compensation of ₹1,00,000/- (Rupees one lakh only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondents to the

petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 408/2016
Date of Institution : 27-6-2016
Date of Decision : 30-03-2019

Shri Chain Singh s/o Shri Fakiru Ram, r/o Village and Post Office Haddal, Tehsil Nurpur, District Kangra, H.P. *..Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D., Division, Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P. *..Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.
For the Respondent(s) : Sh. Tarsem Kumar, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Chain Singh s/o Shri Fakiru Ram, r/o Village and Post Office Haddal, Tehsil Nurpur, District Kangra, H.P. during August, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division Nurpur, Tehsil Nurpur, District Kangra, H.P., (2) The Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked as daily wages worker and has raised his industrial dispute after more than 20 years *vide* demand notice dated-nil-received on 13-06-2011, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of more than 20 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis in the year 1985 in HPPWD Sub-Divisions-I and II, Nurpur and had worked as such till the year 1990, when his services were illegally terminated by the respondents. He had completed more than 240 days in 12 calendar months from the date of his retrenchment. HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the re-engaged employees as detailed in para No. 3 of the petition. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were reengaged on 25-5-2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his reengagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“that the termination/retrenchment of the petitioner by the employer/opposite party be declared null and void and he be ordered to be re-engaged at that very place, from where he was retrenched alongwith all consequential benefits and other allowances and salary, besides other benefits and regularization after 10 years of service with seniority and back wages alongwith interest @18% per annum. Other relief(s) be also provided to the petitioner, as deemed fit”.

3. On notice, the respondents appeared. Only respondent No.1 filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on the grounds of delay and laches have been taken.

On merits, it is denied that the services of the petitioner had been engaged as beldar in the year 1985 in HPPWD Division, Nurpur. It is also denied that the petitioner was disengaged by the respondents in the year 1990. It is asserted that he was engaged as a daily wager by HPPWD Sub-Division Suliali, Division Jassur and had worked intermittently *w.e.f.* January, 1986 upto August, 1990. He had not completed 240 days in every calendar year (excluding the year 1987 *i.e.* 270 days, 1988 *i.e.* 290 days and 1989 *i.e.* 290 days). The petitioner thereafter had left the work of his own sweet will and had never approached the department. It is claimed that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It is denied that respondent No.1 had reengaged workers on 25-5-2010. Infact workers were reengaged by the respondents as per the orders of the Hon'ble High Court. It is admitted that HPPWD Divisions Nurpur and Jawali

are involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. It is denied that a pick and choose policy had been adopted by the respondents. Neither any junior had been retained nor engaged by the respondent, so there was no violation of the provisions of Sections 25-G and 25-H of the Act. It is denied that the petitioner had made various requests and that assurances had been given to him by the respondents. After leaving the work in August, 1990, the petitioner had never approached the respondents and had raised the demand notice only in the year 2011, *i.e.* after about 21 years.

In these circumstances, respondent No.1 prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by respondent No.1.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24-3-2018:

- (1) Whether termination of services of the petitioner by the respondents during August, 1990 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Chain Singh examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19-8-1998 as Ex. PW1/B, copy of letter dated 18-12-1999 as Ex. PW1/C, copy of notice dated 4-5-2002 as Ex. PW1/D, copy of resolution dated 18-7-2002 as Ex. PW1/E, copy of UPC and registered postal receipts as Ex. PW1/F & G and copy of letter dated 18-1-2000 as Ex. PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23-7-1994 as Ex. RW1/C, copy of office order dated 29-11-2010 as Ex. RW1/D, copy of letter dated 19-8-1998 as Ex. RW1/E, copy of application dated 18-12-1999 filed by Kusum Lata as Ex. RW1/F, copy of letter dated 18-1-2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of working days chart of Smt. Kusum Lata as Ex. RW1/I & Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: Yes
Issue No. 2	: Discussed

Issue No. 3	: No
Issue No. 4	: No
Relief	: Petition is partly allowed awarding lump sum compensation of ` 1,20,000/- per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1, 2 and 4:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Chain Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification No. PBW-(A)-A(1)17/94. He denied that he had never worked with the respondents. Volunteered that, he had worked regularly from the year 1985 upto the year 1990. He denied that from the year 1986 upto the year 1990 he had worked intermittently. He denied that he had never worked in the year 1985. He further denied that neither he was given breaks nor disengaged by the department. It was also denied by him that no juniors to him had been kept at work. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

12. Ex. PW1/B is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as a daily waged Store Clerk.

13. Ex. PW1/C is the copy of letter dated 18-12-1999 to the Chief Executive Engineer, HPPWD, US Club, Shimla by Smt. Kusum Lata.

14. Ex. PW1/D is the copy of letter dated 4-5-2002 regarding notice under Section 80 of CPC to The Secretary, H.P. Public Works Department, Government of Himachal Pradesh, Shimla.

15. Ex. PW1/E is the copy of letter dated 18-7-2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh.

16. Ex. PW1/F is the copy of letter/UPC dated 18-7-2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh and others.

17. Ex. PW1/G is the copy of postal receipts.

18. Ex. PW1/H is the copy of letter dated 18-1-2000 from Chief Engineer, HPPWD, Shimla to Executive Engineer, HPPWD, 9th Circle, HPPWD, Nurpur.

19. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 upto the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

20. PW3 Shri Harnam Singh stated that he was engaged in the year 1984-85 in HPPWD Division, Nurpur. After about one year, he had become a mate. He was removed by the department in the year 1990, when he had obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

21. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

22. In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29-11-2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

23. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to shift of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

24. Ex. RW1/C is the copy of Office Order dated 23-7-1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

25. Ex. RW1/D is the copy of another Office Order dated 29-11-2010 with regard to implementation of the award of this Court dated 22-12-2007.

26. Ex. RW1/E is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

27. Ex. RW1/F is the copy of letter dated 18-12-1999 regarding representation of Smt. Kusum Lata.

28. Ex. RW1/G is the copy of letter dated 18-1-2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, H.P. HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

29. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

30. Ex. RW1/I is the copy of working days chart of Smt. Kusum Lata working under Banikhet Sub Division HPPWD Banikhet.

31. Ex. RW1/J is the copy of working days chart of Smt. Kusum Lata working under Suliali Sub-Division HPPWD Suliali.

32. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondents in the year 1985 and that he had worked as such upto the year 1990. The respondents took the stand that the petitioner had been engaged as a daily waged beldar in HPPWD Sub Division Suliali w.e.f. January, 1986 and that he had worked intermittently upto August, 1990. The petitioner denied this case of the respondents. He while under cross examination categorically denied that he had never worked with the department in the year 1985. However, the respondents have placed and proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. Its perusal discloses that the services of the petitioner were engaged by respondent No.2 in the month of January, 1986 for the first time as a daily waged beldar and he had worked as such upto August, 1990. The claimant/petitioner has not placed and exhibited on record any document to show that he had regularly worked with the respondents from the year 1985 upto the year 1990.

33. A plea was taken by the respondents that the petitioner had abandoned the work himself. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand*** reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondents calling upon him to resume the duties. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondents for his alleged willful absence from duty. Thus, the plea of abandonment put forth by the respondents/employers is not established.

34. It was next contended by the learned Assistant District Attorney for the respondents that the petitioner had not worked for 240 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had completed working for more than 240 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

35. Section 25-B of the Act defines "continuous service". In terms of Sub-Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The petitioner claimed that he was employed in the year 1985 and his services were retrenched in the year 1990 and during the period between 1985 to 1990, he had worked for a period of more than 240 days. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

36. Applying the principles laid down in the above case by the Hon'ble Supreme Court, the evidence produced has to be looked into. The respondents claimed that the petitioner did not work for 240 days. The petitioner was a workman hired on a daily waged basis. So, it is obvious that he would have difficulty in having access to all the official documents, muster rolls etc. in connection with his service. He has come forward and deposed, so in my humble opinion the burden of proof shifts to the employer/respondents to prove that he did not complete 240

days of service in the requisite period to constitute continuous service. At the risk of repetition, per the mandays chart copy of which is Ex. RW1/H, the petitioner had initially been engaged in January, 1986 as a daily wager and he had worked upto August, 1990. As per the reference the services of the petitioner were terminated in August, 1990. It was the contention of the respondents that they had not terminated the services of the petitioner, but he had abandoned the work. However, this plea of abandonment of the respondents has already been negated by me above. As per the mandays chart Ex. RW1/H, the petitioner had worked for 185 days in the year 1986, 270 days in the year 1987, 290 days in the year 1988, 290 days in the year 1989 and for 186 days in the year 1990. Thus, in his total service for a period of five years in between January, 1986 to August, 1990, he had only worked for 1221 days. Be it recorded here that the petitioner had worked for more than 240 days preceding twelve calendar months from the date of his termination, which is stated in the reference as August, 1990. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only with regard to alleged illegal termination. It is established on record that the petitioner had worked for 240 days preceding twelve calendar months from date of his termination. It is evident from the mandays chart that from August, 1989 upto July, 1990, the petitioner had worked for 314 days *i.e.* for 25 days in the month of August, 26 days in the month of September, 25 days in the month of October, 28 days in the month of November, and 27 days in the month of December for the year 1989 and 29 days in the month of January, 27 days in the month of February, 24 days in the month of March, 25 days in the month of April, 29 days in the month of May, 26 days in the month of June and 23 days in the month of July for the year 1990. Therefore, during a period of twelve calendar months anterior to the date of termination, the petitioner had actually worked under the employer for not less than 240 days, so as to meet the requirement of law of having continuous service of one year, as provided under Section 25-B of the Act. Thus, it was required of the respondents to have issued one month's notice in writing to the petitioner indicating the reasons for retrenchment, prior to his termination. It is not the case of the respondents that any such notice had been served upon the petitioner or any retrenchment compensation had been paid to him. So, it can be said that the petitioner's service was terminated without complying with the provisions of Section 25-F of the Act.

37. Section 25-N of the Act provides for the procedure for retrenchment. The said Section reads:—

“25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,—

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
 - (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

- (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

.....

- (7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.....”

38. Admittedly, no notice as provided under Section 25-N (a) of the Act was served upon the petitioner, nor any prior permission of the appropriate Government or such authority as specified by the Government by a notification in the Official Gazette had been obtained by the respondents, as provided under section 25-N (b) of the Act. So, it can be said that the services of the petitioner had also been terminated without complying with the provisions of Section 25-N of the Act.

39. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondents. A detail of such persons has been given in para 3 of the statement of claim. Shri Chain Singh (PW1) also named such persons to be junior to him in his chief-examination, being in the shape of affidavit Ex. PW1/A. The respondents, and in particular respondent No.1, refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the respondents after his alleged termination. Significantly, no seniority list has been placed and exhibited on record or any other witness examined so as to show that the persons named in the statement of claim and in his affidavit by the petitioner were junior to him and who had been retained by the respondents at the time of the termination of his services. The statements of the witnesses examined by the petitioner as Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3) are silent in this regard. There is also no whisper in their testimonies that persons junior to the petitioner are still in service. PW3 Shri Harnam Singh claimed that his services were engaged by respondent No.1 in the year 1984-85, whereas, it is apparent from the record that the services of the petitioner as daily waged beldar for the first time were engaged by respondent No. 2 in the month of January, 1986. So, as per the own testimony of this witness of the petitioner, he was senior to the petitioner. Shri Sukar Deen (PW2) claimed himself to have been engaged by respondent No.1 in the year 1986. He has not mentioned in his substantive evidence the date and month of his initial engagement. It is also not made out from his sworn testimony that he was junior to the petitioner. So, the testimonies of the aforesaid witnesses are of no help to the petitioner to establish on record that the principle of ‘last come first go’ had not been adhered to by the respondents. Then, no prayer had ever been made by the petitioner for the production of the seniority list from the respondents during the pendency of this case.

40. Faced with the situation, by referring to the copy of mandays chart pertaining to Smt. Kusum Lata which has been placed on record by respondent No.1 as Ex. RW1/J, it was contended by the learned Counsel for the petitioner that she is certainly junior to the petitioner, as she is shown to have been engaged in service in Suliali Sub-Division, HPPWD Suliali in

February, 2000. This cannot be accepted. Placed on record by respondent No.1 is another copy of mandays chart pertaining to said Smt. Kusum Lata as Ex. RW1/I. As per this document Smt. Kusum Lata had initially been engaged in the month of November, 1983 in Sub-Division No.1 HPPWD, Banikhet and that she had continued to work as such there upto November, 1988. Placed on record is also her representation to the Engineer-in-Chief, HPPWD Shimla, copy of which is Ex. RW1/F. On her representation, it is evident that she stood transferred and posted as a daily waged Store Clerk from 7th Circle HPPWD Dalhousie to 9th Circle HPPWD Nurpur. Reference in this regard can be made to the copy of letter dated 18-1-2000 of Engineer-in-Chief, HPPWD Shimla, Ex. RW1/G. On allotment of one post of Store Clerk in 9th Circle, HPPWD Nurpur, *vide* the aforesaid letter, Smt. Kusum Lata was adjusted as such there, where she has been working regularly from the year 2000 upto January, 2009, as is evident from the copy of her mandays chart, Ex. RW1/J. So, she can also not be termed as a junior to the petitioner. There is nothing on record to show that the services of said Smt. Kusum Lata had ever been disengaged at any point of time. Rather she appears to have been working with the HPPWD Division Nurpur. Her joining in the 9th Circle HPPWD Nurpur, on her request in the month of February, 2000 cannot make her a junior to the petitioner, particularly when her year of joining is much prior to that of the petitioner in the HPPWD department *i.e.* she was engaged in the year 1983, whereas the petitioner, as discussed above, had initially been engaged in the year 1986. So, it cannot be said that Smt. Kusum Lata being a junior to the petitioner had been retained in service by the respondents. Therefore, it cannot be said that the respondents had violated the principle of 'last come first go', as envisaged in Section 25-G of the Act.

41. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands have been engaged by the respondents. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

42. While testifying in the Court as PW1, the petitioner has given his age as 56 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he is an agriculturist and earns his livelihood by doing agricultural chores. It is also evident from his cross-examination that he is having landed property. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

43. The learned Assistant District Attorney for the respondents contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by our own Hon'ble High Court in case titled as ***Divisional Manager, Himachal Pradesh Forest Corporation, Division Sunder Nagar, District Mandi, H.P. vs. Dilu Ram*** (CWP No. 95/2000 decided on 26-8-2004) wherein it was *inter alia* held:—

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh v. Sirhind Co-op-Marketing-cum-Processing Service Society Ltd.* 1999 (82) FLR137(SC)...”

44. In ***Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160***, delay of more than 10 years was condoned by our own Hon'ble High Court and it was laid down that the principle of Limitation Act was not applicable to the industrial dispute. Similarly, it was laid down by the Hon'ble Supreme Court in ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82*** that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

45. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Dharamshala appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer had referred the matter to the Labour Commissioner, Himachal Pradesh vide his report under Section 12(4) of the Act. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-1/85 (Lab)ID/2016-Kangra, dated 30th May, 2016. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim, therefore, does not suffer from the vice of delay and laches. So, the aforesaid contention of the learned District Attorney merits rejection and is rejected.

46. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh*** reported in ***2013 (136) FLR 893 (SC)***, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum had been awarded. Recently, in case titled as ***Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651***, by relying upon the cases of ***Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177*** and ***District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)***, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as ***State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791***, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about 05 years and actually worked for 1221 days as per mandays chart on record and that the services of petitioner were disengaged in August, 1990, who had worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about ***twenty years*** i.e. demand notice was given in the year 2011. It is also pertinent to mention here that the petitioner on the date of filing the claim petition, was aged 56 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and

the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for lump sum compensation.

47. In view the discussion and findings arrived at by me above, a lump-sum compensation of ₹1,20,000/- (Rupees one lakh twenty thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue No. 4 is answered in the negative and against the respondents.

Issue No. 3:

48. It has not been shown by the respondents as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondents at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondents.

Relief:

49. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondents are hereby directed to pay a compensation of ₹1,20,000/- (Rupees one lakh twenty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondents to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No.	: 893/201
Date of Institution	: 24-12-2016
Date of Decision	: 30-03-2019

Shri Sukar Deen s/o Shri Suar Ali, r/o V.P.O. Aund, Tehsil Nurpur, District Kangra, H.P.

..Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P. ..*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.
 For the Respondent(s) : Sh. Tarsem Kumar, A.D.A.
 AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Shri Sukar Deen s/o Shri Suar Ali, r/o V.P.O. Aund, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (i) The Executive Engineer, H.P.P.W.D., Division Nurpur, District Kangra, H.P., (ii) The Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after about 21 years *vide* demand notice dated nil received in the Labour Office Kangra at Dharamshala on 13-06-2011, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis on 26-6-1986 in HPPWD Sub-Divisions-I and II, Nurpur and had worked as such till the year 1990, when his services were illegally terminated by the respondents. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the re-engaged employees as detailed in para No. 3 of the petition. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were re-engaged on 25-5-2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his re-engagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“that the termination/retrenchment of the petitioner by the employer/opposite party be declared null and void and he be ordered to be re-engaged at that very place, from

where he was retrenched alongwith all consequential benefits and other allowances and salary, besides other benefits and regularization after 10 years of service with seniority and back wages alongwith interest @18% per annum. Other relief(s) be also provided to the petitioner, as deemed fit”.

3. On notice, the respondents appeared. Only respondent No.1 filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on the grounds of delay and laches have been taken.

On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from the year 1986 upto the year 1990. It was asserted that the petitioner had never been engaged by the respondents so the question of completing 240 days did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondent, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondent. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon’ble High Court only then the demand notice was issued by the petitioner in the year 2011, *i.e.* after about 21 years.

In these circumstances, respondent No.1 prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by respondent No.1.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24-3-2018:—

- (1) Whether termination of services of the petitioner by the respondents during year, 1990 is/was illegal and unjustified as alleged? ..*OPP*.
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR*.
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? ..*OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Sukar Deen s/o Shri Ilam Deen examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19-8-1998 as Ex. PW1/B, copy of letter dated 18-12-1999 as Ex. PW1/C, copy of notice dated 4-5-2002 as Ex. PW1/D, copy of resolution dated 18-7-2002 as Ex. PW1/E, copy of UPC and registered postal receipts as Ex. PW1/F & G and copy of letter dated 18-1-2000 as Ex. PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1,

who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23-7-1994 as Ex. RW1/C, copy of office order dated 29-11-2010 as Ex. RW1/D, copy of letter dated 19-8-1998 as Ex. RW1/E, copy of application dated 18-12-1999 filed by Kusum Lata as Ex. RW1/F, copy of letter dated 18-1-2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of working days chart of Smt. Kusum Lata as Ex. RW1/I & Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Yes
Issue No. 4	: Not pressed/redundant
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Sukar Deen (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification No. PBW-(A)-A(1)17/94. He admitted that he had never worked in Jawali Division. Volunteered that, he had worked in Nurpur Division. He denied that he had not worked in Nurpur Division. He also denied that he had never worked with the respondents. Self stated that, he had worked regularly from June, 1986 upto the year 1990. He denied that he had never worked for the period from June, 1986 upto the year 1990. He further denied that he was never disengaged by the respondent/department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

12. Ex. PW1/B is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as a daily waged Store Clerk.

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17. Ex. PW1/G is the copy of postal receipts.

18. Ex. PW1/H is the copy of letter dated 18-1-2000 from Chief Engineer, HPPWD, Shimla to Executive Engineer, HPPWD, 9th Circle, HPPWD, Nurpur.

19. PW2 Shri Sukar Deen s/o Shri Ilam Deen testified that he had worked as beldar from the year 1986 upto the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

20. PW3 Shri Harnam Singh stated that he was engaged in the year 1984-85 in HPPWD Division, Nurpur. After about one year, he had become a mate. He was removed by the department in the year 1990, when he had obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

21. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

22. In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29-11-2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

23. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to shift of HPPWD Division Jassur to Jawali alongwith sanctioned strength and staff.

24. Ex. RW1/C is the copy of Office Order dated 23-7-1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

25. Ex. RW1/D is the copy of another Office Order dated 29-11-2010 with regard to implementation of the award of this Court dated 22-12-2007.

26. Ex. RW1/E is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

27. Ex. RW1/F is the copy of letter dated 18-12-1999 regarding representation of Smt. Kusum Lata.

28. Ex. RW1/G is the copy of letter dated 18-1-2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, H.P. HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

29. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

30. Ex. RW1/I is the copy of working days chart of Smt. Kusum Lata working under Banikhet Sub-Division HPPWD Banikhet.

31. Ex. RW1/J is the copy of working days chart of Smt. Kusum Lata working under Suliali Sub Division HPPWD Suliali.

32. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondents in the year 1986 and that he had worked as such upto the year 1990. It was the stand taken by respondent No.1 that the petitioner had never been engaged by the department. Although, the petitioner (PW1) in his cross-examination denied the fact that he had never been engaged as a daily waged beldar in the year 1986 by the respondents and that he had not worked as such upto the year 1990, but, however, respondent No.1 has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. This mandays chart pertains to HPPWD Division Jawali. Its perusal reveals that the petitioner had not worked with respondent No. 2 even for a single day from the year 1986 upto the year 1990. The petitioner in his substantive evidence also clearly admitted that he never worked in Jawali Division. No mandays chart has been proved on record by the petitioner showing him to have ever worked with respondent No.1. In view of this fact, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that there existed a relationship of employer and employee/workman in between the parties. Significantly, there is no pleading or evidence to the effect as to on which specific date the services of the petitioner stood terminated by this respondent. Only the year of his termination stands specified in the statement of claim and his statement by way of affidavit Ex. PW1/A. Although, witnesses, namely, Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3), were examined by the petitioner in support of his case, but I find that their statements are of no help to him, as their service records were not brought on record to show that they had ever been engaged by the department. Then, it is nowhere the case of the petitioner that he had ever marked his attendance in all those seven years, the period for which he claims to have worked with the respondent. Had there been any attendance register in which the petitioner had appended his signatures, he ought to have placed and exhibited on record the same so as to show that his services had been engaged by the respondents from the year 1986 upto the year 1990. But, so is not the case here. No such attendance register has seen the light of the day, nor any prayer had been made by the petitioner for the production of the same from the respondents during the pendency of this case. Further, he could have easily proved the muster rolls for the period for which he had worked. But, no such muster roll has been produced. Even no appointment letter to show that the services of the petitioner had been engaged by the respondents, has been placed on record by him.

33. From the ocular and documentary evidence of respondent No.1 available on record, it can be gathered that the petitioner had never been appointed in any capacity at any point of time by the respondents.

34. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondents, therefore, the provisions of Section 25-F of the Act are not attracted in this case. The respondents can also not be held to have violated the provisions of Sections 25-G, 25-H and 25-N of the Act, as the relationship of the petitioner and the respondents being that of a workman and employer stands not established on record.

35. In view of the discussion and findings aforesaid, it appears to me that the avarice of the petitioner to grab government job and money had forced him to file a totally false and baseless claim. He is not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

36. Taking into account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4:

37. Not pressed. Even otherwise, the plea of delay and laches would have been relevant, had the petitioner been able to prove the demand notice as well as the fact of he being a workman under the respondents for the alleged period. Hence, this issue becomes redundant.

Relief:

38. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition being meritless, not maintainable and malafide, fails. It is, therefore, dismissed with costs quantified at ₹5,000/-. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No.	: 469/2016
Date of Institution	: 20-8-2016
Date of Decision	: 26-03-2019

Shri Dev Raj s/o Shri Chatro Ram, r/o Village and Post Office Danni, Tehsil Nurpur,
District Kangra, H.P. ..Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.
 2. The Executive Engineer, H.P.P.W.D. Division Jawali, Tehsil Nurpur, District Kangra, H.P.
- ..Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. Naresh Kaul, Adv.
For the Respondent(s)	: Sh. Tarsem Kumar, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Dev Raj s/o Shri Chatro Ram, r/o Village and Post Office Danni, Tehsil Nurpur, District Kangra H.P. during June, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P., (2) The Executive Engineer, H.P.P.W.D. Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after about 21 years *vide* demand notice dated-nil-received on 13-06-2011, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of after about 21 years in raising the industrial dispute, what amount of back ages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis in the month of February, 1986 in HPPWD Sub Divisions-I and II, Nurpur and had worked as such till the year 1990, when his services were illegally terminated by the respondents. He had worked under the various muster rolls. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the re-engaged employees as detailed in para No. 3 of the petition. The mates of the petitioner were S/Shri Kabil, Thuru Ram and Prithi Ram. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were re-engaged on 25-5-2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his re-engagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“that the termination/retrenchment of the petitioner by the employer/opposite party be declared null and void and he be ordered to be re-engaged at that very place, from where he was retrenched alongwith all consequential benefits and other allowances and salary, besides other benefits and regularization after 10 years of service with seniority and back wages alongwith interest @18% per annum. Other relief(s) be also provided to the petitioner, as deemed fit”.

3. On notice, the respondents appeared. Only respondent No.1 filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on the grounds of delay and laches have been taken.

On merits, it is denied that the services of the petitioner had been engaged as beldar in the year 1986 in HPPWD Division, Nurpur. It is also denied that the petitioner was disengaged by the respondents in the year 1990. It is asserted that he was engaged as a daily wager by HPPWD Sub Division Suliali, Division Jassur and had worked intermittently *w.e.f.* April, 1990 upto July, 1990. He had not completed 240 days in every calendar year. The petitioner thereafter had left the work of his own sweet will and had never approached the department. It is claimed that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It is denied that respondent No.1 had re-engaged workers on 25-5-2010. In fact workers were re-engaged by the respondents as per the orders of the Hon'ble High Court. It is admitted that HPPWD Divisions Nurpur and Jawali are involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. It is denied that a pick and choose policy had been adopted by the respondents. Neither any junior had been retained nor engaged by the respondent, so there was no violation of the provisions of Sections 25-G and 25-H of the Act. It is denied that the petitioner had made various requests and that assurances had been given to him by the respondents. After leaving the work in August, 1987, the petitioner had never approached the respondents and had raised the demand notice only in the year 2011, *i.e.* after about 21 years.

In these circumstances, respondent No.1 prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by respondent No.1.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24-3-2018:—

- (1) Whether termination of services of the petitioner by the respondents during June, 1990 is/was illegal and unjustified as alleged? ..OPP.
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
- (3) Whether the claim petition is not maintainable in the present form? ..OPR.
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? ..OPR.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Dev Raj examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19-8-1998 as Ex. PW1/B, copy of letter dated 18-12-1999 as Ex. PW1/C, copy of notice dated 4-5-2002 as Ex. PW1/D, copy of resolution dated 18-7-2002 as Ex. PW1/E, copy of UPC and registered postal receipts as Ex. PW1/F & G and copy of letter dated 18-1-2000 as Ex. PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23-7-1994 as Ex. RW1/C, copy of office order dated 29-11-2010 as Ex. RW1/D, copy of letter dated 19-8-1998 as Ex. RW1/E, copy of application dated 18-12-1999 filed by Kusum Lata as Ex. RW1/F, copy of letter dated 18-1-2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of working days chart of Smt. Kusum Lata as Ex. RW1/I & Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Yes
Issue No. 4	: Not pressed
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Dev Raj (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification No. PBW-(A)-A(1)17/94. He denied that he had not worked with the respondents. Volunteered that, he had worked regularly from the year 1986 upto the year 1990. He denied that he had worked only for the months of March, May and June in between the years 1986 and 1990. He further denied that no breaks had been given by the department. He also denied that he was never disengaged by the respondent/department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land,

which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

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19. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 upto the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

20. PW3 Shri Harnam Singh stated that he was engaged in the year 1984-85 in HPPWD Division, Nurpur. After about one year, he had become a mate. He was removed by the department in the year 1990, when he obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

21. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

22. In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had

been kept at work after 29-11-2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

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30. Ex. RW1/I is the copy of working days chart of Smt. Kusum Lata working under Banikhet Sub-Division HPPWD Banikhet.

31. Ex. RW1/J is the copy of working days chart of Smt. Kusum Lata working under Suliali Sub-Division HPPWD Suliali.

32. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondents in the year 1986 and that he had worked as such upto the year 1990. The respondents took the stand that the petitioner had been engaged as a daily waged beldar in HPPWD Sub-Division Suliali *w.e.f.* April, 1990 and that he had worked intermittently upto July, 1990. The petitioner denied this case of the respondents. He while under cross-examination categorically denied that he had worked with the department for the months of March, May and June, 1990 only in between the years 1986 and 1990. However, the respondents have placed and proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. Its perusal discloses that the services of the petitioner were engaged by respondent No. 2 in the month of March, 1990 for the first time as a daily waged beldar and he had worked as such upto June, 1990. The claimant/petitioner has not placed and exhibited on record any document to show that he had regularly worked with the respondents from the year 1986 upto the year 1990.

33. A plea was taken by the respondents that the petitioner had abandoned the work himself. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand*** reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondents calling upon him to resume the duties. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings

were initiated against the petitioner by the respondents for his alleged willful absence from duty. Thus, the plea of abandonment put forth by the respondents/employers is not established.

34. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of 12 calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. As per the mandays chart Ex. RW1/H, the petitioner had only worked for 69 days in the year 1990. Thus, in his total service for a period of about four months in between March, 1990 to June, 1990, he had only worked for 69 days. Therefore, the provisions of Sections 25-F and 25-N of the Act are not attracted in this case.

35. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondents. A detail of such persons has been given in para 3 of the statement of claim. Shri Dev Raj (PW1) also named such persons to be junior to him in his chief-examination, being in the shape of affidavit Ex. PW1/A. The respondents, and in particular respondent No.1, refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the respondents after his alleged termination. Significantly, no seniority list has been placed and exhibited on record or any other witness examined so as to show that the persons named in the statement of claim and in his affidavit by the petitioner were junior to him and who had been retained by the respondents at the time of the termination of his services. The statements of the witnesses examined by the petitioner as Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3) are silent in this regard. There is also no whisper in their testimonies that persons junior to the petitioner are still in service. PW2 Shri Sukar Deen claimed that he was engaged as a beldar in HPPWD Division, Nurpur in the year 1986, while PW3 Shri Harnam Singh claimed that his services were engaged by respondent No.1 in the year 1984-85. It is apparent from the record that the services of the petitioner as daily waged beldar for the first time were engaged by respondent No.2 in the month of April, 1990. So, as per the own testimonies of these witness of the petitioner, they were senior to the petitioner. So, the testimonies of the aforesaid witnesses are of no help to the petitioner to establish on record that the principle of 'last come first go' had not been adhered to by the respondents. Then, no prayer had ever been made by the petitioner for the production of the seniority list from the respondents during the pendency of this case.

36. Faced with the situation, by referring to the copy of mandays chart pertaining to Smt. Kusum Lata which has been placed on record by respondent no.1 as Ex. RW1/J, it was contended by the learned Counsel for the petitioner that she is certainly junior to the petitioner, as she is shown to have been engaged in service in Suliali Sub Division, HPPWD Suliali in February, 2000. This cannot be accepted. Placed on record by respondent No.1 is another copy of mandays chart pertaining to said Smt. Kusum Lata as Ex. RW1/I. As per this document Smt. Kusum Lata had initially been engaged in the month of November, 1983 in Sub Division No.1 HPPWD, Banikhet and that she had continued to work as such there upto November, 1988. Placed on record is also her representation to the Engineer-in-Chief, HPPWD Shimla, copy of which is Ex. RW1/F. On her representation, it is evident that she stood transferred and posted as a daily waged Store Clerk from 7th Circle HPPWD Dalhousie to 9th Circle HPPWD Nurpur. Reference in this regard can be made to the copy of letter dated 18-1-2000 of Engineer-in-Chief, HPPWD Shimla, Ex. RW1/G. On allotment of one post of Store Clerk in 9th Circle, HPPWD Nurpur, *vide* the aforesaid letter, Smt. Kusum Lata was adjusted as such there, where she has been working regularly from the year 2000 upto January, 2009, as is evident from the copy of her mandays days chart, Ex. RW1/J. So, she can also not be termed as a junior to the petitioner. There is nothing on record to show that the services of said Smt. Kusum Lata had ever been disengaged at any point of time. Rather she appears to have been working with the HPPWD Division Nurpur. Her joining in the 9th Circle HPPWD Nurpur, on her request in the month of

February, 2000 cannot make her a junior to the petitioner, particularly when her year of joining is much prior to that of the petitioner in the HPPWD department *i.e.* she was engaged in the year 1983, whereas the petitioner, as discussed above, had initially been engaged in the year 1990. So, it cannot be said that Smt. Kusum Lata being a junior to the petitioner had been retained in service by the respondents. Therefore, it cannot be said that the respondents had violated the principle of 'last come first go', as envisaged in Section 25-G of the Act.

37. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands have been engaged by the respondents. That being so, the provisions of Section 25-H of the Act are also not attracted in this case

38. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

39. Taking into account my findings on issues no. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4:

40. Not pressed.

Relief:

41. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No.	: 815/2016
Date of Institution	: 24-11-2016
Date of Decision	: 26-03-2019

Des Raj s/o Shri Mangat Ram, r/o Village Danna, P.O. Khawara, Tehsil Nurpur,
District Kangra, H.P. ..Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D., Division Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P. ...*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Sh. Naresh Kaul, Adv.
For the Respondent(s)	: Sh. Tarsem Kumar, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Shri Des Raj s/o Shri Mangat Ram, r/o Village Danna, P.O. Khawara, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (i) The Executive Engineer, H.P.P.W.D., Division Nurpur, District Kangra, H.P., (ii) The Executive Engineer, H.P.P.W.D., Division Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after more than 22 years *vide* demand notice dated nil received in the Labour Office Dharamshala on 04-03-2013, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of more than 22 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-workers is entitled to from the above employers/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis in the month of February, 1987 in HPPWD Sub Divisions-I and II, Nurpur and had worked as such till the year 1990, when his services were illegally terminated by the respondents. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the re-engaged employees as detailed in para No. 3 of the petition. The mate of the petitioner was Shri Prem Singh, while Junior Engineers were S/Shri Chauhan Ji and Sharma Ji. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were re-engaged on 25-5-2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his re-engagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

"that the termination/retrenchment of the petitioner by the employer/opposite party be declared null and void and he be ordered to be re-engaged at that very place, from where he was retrenched alongwith all consequential benefits and other allowances and salary, besides other benefits and regularization after 10 years of service with seniority and back wages alongwith interest @18% per annum. Other relief(s) be also provided to the petitioner, as deemed fit".

3. On notice, the respondents appeared. Only respondent No.1 filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on the grounds of delay and laches have been taken.

On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from the month of February, 1987 upto the year 1990. It was asserted that the petitioner had never been engaged by the respondent so the question of completing 240 days did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondent, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondent. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, *i.e.* after about 21 years.

In these circumstances, respondent No.1 prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by respondent No.1.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24-3-2018:—

- (1) Whether termination of services of the petitioner by the respondents during year, 1990 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Des Raj examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3) as his witnesses. Besides this

the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19-8-1998 as Ex. PW1/B, copy of letter dated 18-12-1999 as Ex. PW1/C, copy of notice dated 4-5-2002 as Ex. PW1/D, copy of resolution dated 18-7-2002 as Ex. PW1/E, copy of UPC and registered postal receipts as Ex. PW1/F & G and copy of letter dated 18-1-2000 as Ex. PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23-7-1994 as Ex. RW1/C, copy of office order dated 29-11-2010 as Ex. RW1/D, copy of letter dated 19-8-1998 as Ex. RW1/E, copy of application dated 18-12-1999 filed by Kusum Lata as Ex. RW1/F, copy of letter dated 18-1-2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of working days chart of Smt. Kusum Lata as Ex. RW1/I & Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Yes
Issue No. 4	: Not pressed/redundant
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Des Raj (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification No. PBW-(A)-A(1)17/94. He admitted that he had never worked in Jawali Division. Volunteered that, he had worked in Nurpur Division. He denied that he had not worked in Nurpur Division. He also denied that he had never worked with the respondents. Self stated that, he had worked regularly from the year 1987 upto the year 1990. He denied that he had never worked for the period from the year 1987 upto the year 1990. He further denied that he was never disengaged by the respondent/department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

12. Ex. PW1/B is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as a daily waged Store Clerk.

13. Ex. PW1/C is the copy of letter dated 18-12-1999 to the Chief Executive Engineer, HPPWD, US Club, Shimla by Smt. Kusum Lata.

14. Ex. PW1/D is the copy of letter dated 4-5-2002 regarding notice under Section 80 of CPC to The Secretary, H.P. Public Works Department, Government of Himachal Pradesh, Shimla.

15. Ex. PW1/E is the copy of letter dated 18-7-2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh.

16. Ex. PW1/F is the copy of letter/UPC dated 18-7-2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh and others.

17. Ex. PW1/G is the copy of postal receipts.

18. Ex. PW1/H is the copy of letter dated 18-1-2000 from Chief Engineer, HPPWD, Shimla to Executive Engineer, HPPWD, 9th Circle, HPPWD, Nurpur.

19. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 upto the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

20. PW3 Shri Harnam Singh stated that he was engaged in the year 1984-85 in HPPWD Division, Nurpur. After about one year, he had become a mate. He was removed by the department in the year 1990, when he had obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

21. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

22. In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29-11-2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

23. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to shift of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

24. Ex. RW1/C is the copy of Office Order dated 23-7-1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

25. Ex. RW1/D is the copy of another Office Order dated 29-11-2010 with regard to implementation of the award of this Court dated 22-12-2007.

26. Ex. RW1/E is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

27. Ex. RW1/F is the copy of letter dated 18-12-1999 regarding representation of Smt. Kusum Lata.

28. Ex. RW1/G is the copy of letter dated 18-1-2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, H.P. HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

29. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

30. Ex. RW1/I is the copy of working days chart of Smt. Kusum Lata working under Banikhet Sub Division HPPWD Banikhet.

31. Ex. RW1/J is the copy of working days chart of Smt. Kusum Lata working under Suliali Sub-Division HPPWD Suliali.

32. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the month of February, 1987 and that he had worked as such upto the year 1990. It was the stand taken by respondent No.1 that the petitioner had never been engaged by the department. Although, the petitioner (PW1) in his cross-examination denied the fact that he had never been engaged as a daily waged beldar in the year 1987 by the respondents and that he had not worked as such upto the year 1990, but, however, respondent No.1 has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. This mandays chart pertains to HPPWD Division Jawali. Its perusal reveals that the petitioner had not worked with respondent No. 2 even for a single day from the year 1987 upto the year 1990. The petitioner in his substantive evidence also clearly admitted that he never worked in Jawali Division. No mandays chart has been proved on record by the petitioner showing him to have ever worked with respondent No.1. In view of this fact, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that there existed a relationship of employer and employee/workman in between the parties. Significantly, the petitioner neither in his pleadings, nor in his ocular evidence has stated the date on which he was engaged by respondent No.1. There is also no pleading or evidence to the effect as to on which specific date his services stood terminated by this respondent. Only the months and years of joining and termination of the petitioner stand specified in the statement of claim and his statement by way of affidavit Ex. PW1/A. Although, witnesses, namely, Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3), were examined by the petitioner in support of his case, but I find that their statements are of no help to him, as their service records were not brought on record to show that they had ever been engaged by the department. Then, it is nowhere the case of the petitioner that he had ever marked his attendance in all those three years, the period for which he claims to have worked with the respondent. Had there been any attendance register in which the petitioner had appended his signatures, he ought to have placed and exhibited on record the same so as to show that his services had been engaged by the respondents from the year 1987 upto the year 1990. But, so is not the case here. No such attendance register has seen the light of the day, nor any prayer had been made by the petitioner for the production of the same from the respondents during the pendency of this case. Further, he could have easily proved the muster rolls for the period for which he had worked. But, no such muster roll has been produced. Even no appointment letter to show that the services of the petitioner had been engaged by the respondents, has been placed on record by him.

33. From the ocular and documentary evidence of respondent No.1 available on record, it can be gathered that the petitioner had never been appointed in any capacity at any point of time by the respondents.

34. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondents, therefore, the provisions of Section 25-F of the Act are not attracted in this case. The respondents can also not be held to have violated the provisions of Sections 25-G, 25-H and 25-N of the Act, as the relationship of the petitioner and the respondents being that of a workman and employer stands not established on record.

35. In view of the discussion and findings aforesaid, it appears to me that the avarice of the petitioner to grab government job and money had forced him to file a totally false and baseless claim. He is not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

36. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4:

37. Not pressed. Even otherwise, the plea of delay and laches would have been relevant, had the petitioner been able to prove the demand notice as well as the fact of he being a workman under the respondents for the alleged period. Hence, this issue becomes redundant.

Relief:

38. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition being meritless, not maintainable and malafide, fails. It is, therefore, dismissed with costs quantified at ₹5,000/-. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 812/2016
Date of Institution : 24-11-2016

Shri Milap Singh s/o Shri Rattan Singh, r/o Village and Post Office Hadal, Tehsil Nurpur, District Kangra, H.P. ..Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D., Division, Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P. ..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.
For the Respondent(s) : Sh. Tarsem Kumar, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Milap Singh s/o Shri Rattan Singh, r/o Village and Post Office Hadal, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (1) The Executive Engineer, H.P.P.W.D., Division, Nurpur, District Kangra, H.P., (2) The Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after more than 22 years *vide* demand notice dated-nil-received on 04-03-2013, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of more than 22 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis in the month of March, 1984 in HPPWD Sub Divisions-I and II, Nurpur and had worked as such till the year 1990, when his services were illegally terminated by the respondents. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the re-engaged employees as detailed in para No. 3 of the petition. The mates of the petitioner were S/Shri Chain Singh, Satpal, Rattan Singh, Hans Raj and Kartar. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were reengaged on 25-5-2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his reengagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). No notice was

served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his sengagement, hence he is entitled to full back wages, as his termination/retrrenchment is illegal and arbitrary.

As such, it is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“that the termination/retrrenchment of the petitioner by the employer/opposite party be declared null and void and he be ordered to be re-engaged at that very place, from where he was retrrenched alongwith all consequential benefits and other allowances and salary, besides other benefits and regularization after 10 years of service with seniority and back wages alongwith interest @18% per annum. Other relief(s) be also provided to the petitioner, as deemed fit”.

3. On notice, the respondents appeared. Only respondent No.1 filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on the grounds of delay and laches have been taken.

On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from the month of March, 1984 upto the year 1990. It was asserted that the petitioner had never been engaged by the respondent so the question of completing 240 days did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondent, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondent. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon’ble High Court only then the demand notice was issued by the petitioner in the year 2011, *i.e.* after about 21 years.

In these circumstances, respondent No.1 prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by respondent No.1.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24-3-2018:—

- (1) Whether termination of services of the petitioner by the respondents during year, 1990 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Milap Singh examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19-8-1998 as Ex. PW1/B, copy of letter dated 18-12-1999 as Ex. PW1/C, copy of notice dated 4-5-2002 as Ex. PW1/D, copy of resolution dated 18-7-2002 as Ex. PW1/E, copy of UPC and registered postal receipts as Ex. PW1/F & G and copy of letter dated 18-1-2000 as Ex. PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23-7-1994 as Ex. RW1/C, copy of office order dated 29-11-2010 as Ex. RW1/D, copy of letter dated 19-8-1998 as Ex. RW1/E, copy of application dated 18-12-1999 filed by Kusum Lata as Ex. RW1/F, copy of letter dated 18-1-2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of working days chart of Smt. Kusum Lata as Ex. RW1/I & Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: No
Issue No.2	: No
Issue No.3	: Yes
Issue No.4	: Not pressed/redundant
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Milap Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification No. PBW-(A)-A(1)17/94. He admitted that he had never worked in Jawali Division. Volunteered that, he had worked in Nurpur Division. He denied that he had not worked in Nurpur Division. He also denied that he had never worked with the respondents. Self stated that, he had worked regularly from the year 1984 upto the year 1990. He denied that he had never worked for the period from the year 1984 upto the year 1990. He further denied that he was never disengaged by the respondent/department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

12. Ex. PW1/B is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as a daily waged Store Clerk.

13. Ex. PW1/C is the copy of letter dated 18-12-1999 to the Chief Executive Engineer, HPPWD, US Club, Shimla by Smt. Kusum Lata.

14. Ex. PW1/D is the copy of letter dated 4-5-2002 regarding notice under Section 80 of CPC to The Secretary, H.P. Public Works Department, Government of Himachal Pradesh, Shimla.

15. Ex. PW1/E is the copy of letter dated 18-7-2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh.

16. Ex. PW1/F is the copy of letter/UPC dated 18-7-2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh and others.

17. Ex. PW1/G is the copy of postal receipts.

18. Ex. PW1/H is the copy of letter dated 18-1-2000 from Chief Engineer, HPPWD, Shimla to Executive Engineer, HPPWD, 9th Circle, HPPWD, Nurpur.

19. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 upto the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

20. PW3 Shri Harnam Singh stated that he was engaged in the year 1984-85 in HPPWD Division, Nurpur. After about one year, he had become a mate. He was removed by the department in the year 1990, when he had obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

21. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

22. In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29-11-2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

23. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to shift of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

24. Ex. RW1/C is the copy of Office Order dated 23-7-1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

25. Ex. RW1/D is the copy of another Office Order dated 29-11-2010 with regard to implementation of the award of this Court dated 22-12-2007.

26. Ex. RW1/E is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

27. Ex. RW1/F is the copy of letter dated 18-12-1999 regarding representation of Smt. Kusum Lata.

28. Ex. RW1/G is the copy of letter dated 18-1-2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, H.P. HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

29. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

30. Ex. RW1/I is the copy of working days chart of Smt. Kusum Lata working under Banikhet Sub-Division HPPWD Banikhet.

31. Ex. RW1/J is the copy of working days chart of Smt. Kusum Lata working under Suliali Sub-Division HPPWD Suliali.

32. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the month of March, 1984 and that he had worked as such upto the year 1990. It was the stand taken by respondent No.1 that the petitioner had never been engaged by the department. Although, the petitioner (PW1) in his cross-examination denied the fact that he had never been engaged as a daily waged beldar in the year 1984 by the respondents and that he had not worked as such upto the year 1990, but, however, respondent no.1 has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. This mandays chart pertains to HPPWD Division Jawali. Its perusal reveals that the petitioner had not worked with respondent No. 2 even for a single day from the year 1984 upto the year 1990. The petitioner in his substantive evidence also clearly admitted that he never worked in Jawali Division. No mandays chart has been proved on record by the petitioner showing him to have ever worked with respondent No.1. In view of this fact, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that there existed a relationship of employer and employee/workman in between the parties. Significantly, the petitioner neither in his pleadings, nor in his ocular evidence has stated the date on which he was engaged by respondent No.1. There is also no pleading or evidence to the effect as to on which specific date his services stood terminated by this respondent. Only the months and years of joining and termination of the petitioner stand specified in the statement of claim and his statement by way of affidavit Ex. PW1/A. Although, witnesses, namely, Shri Sukar Deen (PW2) and Shri Harnam Singh (PW3), were examined by the petitioner in support of his case, but I find that their statements are of no help to him, as their service records were not brought on record to show that they had ever been engaged by the department. Then, it is nowhere the case of the petitioner that he had ever marked his attendance in all those three years, the period for which he claims to have worked with the respondent. Had there been any attendance register in which the petitioner had appended his signatures, he ought to have placed and exhibited on record the same so as to show that his services had been engaged by the respondents from the year 1984 upto the year 1990. But, so is not the case here. No such attendance register has seen the light of the day, nor any prayer had been made by the petitioner for the production of the same from the respondents during the

pendency of this case. Further, he could have easily proved the muster rolls for the period for which he had worked. But, no such muster roll has been produced. Even no appointment letter to show that the services of the petitioner had been engaged by the respondents, has been placed on record by him.

33. From the ocular and documentary evidence of respondent No.1 available on record, it can be gathered that the petitioner had never been appointed in any capacity at any point of time by the respondents.

34. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondents, therefore, the provisions of Section 25-F of the Act are not attracted in this case. The respondents can also not be held to have violated the provisions of Sections 25-G, 25-H and 25-N of the Act, as the relationship of the petitioner and the respondents being that of a workman and employer stands not established on record.

35. In view of the discussion and findings aforesaid, it appears to me that the avarice of the petitioner to grab government job and money had forced him to file a totally false and baseless claim. He is not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

36. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4:

37. Not pressed. Even otherwise, the plea of delay and laches would have been relevant, had the petitioner been able to prove the demand notice as well as the fact of he being a workman under the respondents for the alleged period. Hence, this issue becomes redundant.

Relief:

38. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition being meritless, not maintainable and malafide, fails. It is, therefore, dismissed with costs quantified at ₹5,000/-. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of March, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

आबकारी एवं कराधान विभाग

अधिसूचना सं० 04/2020—राज्य कर

शिमला-2, 28 जनवरी, 2020

सं० ई.एक्स.एन.—एफ.(10)—25/2019.—हिमाचल प्रदेश माल और सेवा कर अधिनियम, 2017 (2017 का 10) की धारा 128 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, हिमाचल प्रदेश के राज्यपाल, परिषद् की सिफारिशों पर, राजपत्र, हिमाचल प्रदेश में संख्या: ई.एक्स.एन.—एफ.(10)—5/2018 के तहत तारीख 30 जनवरी, 2018 को प्रकाशित हिमाचल प्रदेश सरकार की अधिसूचना सं० 04/2018—राज्य कर, तारीख 30 जनवरी, 2018 में निम्नलिखित और संशोधन करते हैं, अर्थात्:—

उक्त अधिसूचना में, तीसरे परंतुक में:—

“ “10 जनवरी, 2020” अंकों, अक्षरों और शब्दों के स्थान पर, “17 जनवरी, 2020” अंक, अक्षर और शब्द रखे जाएंगे। ”।

आदेश द्वारा,
संजय कुंडू,
प्रधान सचिव (आबकारी एवं कराधान)।

टिप्पण.—मूल अधिसूचना संख्यांक 4/2018—राज्य कर, तारीख 30 जनवरी, 2018 हिमाचल प्रदेश के राजपत्र में संख्या: ई.एक्स.एन.—एफ.(10)—5/2018 के तहत तारीख 30 जनवरी, 2018 को प्रकाशित की गई थी और अंतिम बार सं० ई.एक्स.एन.—एफ.(10)—25/2019 के तहत 17 जनवरी, 2020 को राजपत्र, हिमाचल प्रदेश में प्रकाशित अधिसूचना संख्या: 74/2019—राज्य कर तारीख 15 जनवरी, 2018 के द्वारा संशोधित की गई थी।

[Authoritative English text of this Department Notification No. EXN-F(10)-25/2019, dated 28-01-2020 as required under clause (3) of Article 348 of the Constitution of India].

EXCISE AND TAXATION DEPARTMENT

NOTIFICATION No. 04/2020-State Tax

Shimla-2, the 28th January, 2020

No. EXN-F(10)-25/2019.—In exercise of the powers conferred by Section 128 of the Himachal Pradesh Goods and Services Tax Act, 2017 (10 of 2017), the Governor of Himachal Pradesh, on the recommendations of the Council, is pleased to make the following further amendment in notification of the Government of Himachal Pradesh, No. 4/2018-State Tax, dated 30th January, 2018, published in the Gazette of Himachal Pradesh *vide* number EXN-F(10)-5/2018, dated 30th January, 2018, namely:—

In the said notification, in the third proviso for the figures, letters and word "10th January, 2020", the figures, letters and word "17th January, 2020" shall be substituted.

By order,

SANJAY KUNDU,
Principal Secretary (E&T).

Note.—The principal notification No. 4/2018-State Tax, dated 30th January, 2018 was published in the Gazette of Himachal Pradesh, *vide* number EXN-F(10)-5/2018, dated 30th January, 2018 and was last amended by notification No. 74/2019-State Tax, dated 15th January, 2020, published in the Gazette of Himachal Pradesh *vide* number EXN-F(10)-25/2019 on 17-01-2020.